

No. 11706

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

WILLIAM BARISOFF, ROBERT I. KNUDSON,
HUBERT L. DAWSON, JR., and ARTHUR M.
LILLY,

Appellants,

vs.

HOLLYWOOD BASEBALL ASSOCIATION, a cor-
poration,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

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PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	Page
Answer	7
Appeal:	
Notice of	25
Order Extending Time on.....	26
Order re Exhibits.....	27
Statement of Points on Which Appellants Intend to Rely on (Circuit Court).....	159
Stipulation as to Certain Exhibits (Circuit Court)....	162
Certificate of Clerk.....	28
Decree	24
Findings of Fact and Conclusions of Law.....	16
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	25
Opinion	12
Order Extending Time on Appeal.....	26
Order re Exhibits.....	27
Petition for Enforcement of Veterans' Re-employment Rights	2
Reporter's Transcript of Proceedings.....	29
Petitioners' Exhibits (See Index to Exhibits)	
Testimony on Behalf of the Government:	
Barisoff, William—	
Direct examination	30
Cross-examination	57
Redirect examiantion	58

Reporter's Transcript of Proceedings:	Page
Testimony on Behalf of the Government:	
Dawson, Hubert L.—	
Direct examination	91
Cross-examination	98
Direct examination (recalled).....	157
Knudson, Robert I.—	
Direct examination	80
Cross-examination	88
Lilly, Arthur M.—	
Direct examination	61
Cross-examination	76
Testimony on Behalf of Respondent:	
Fausett, Robert S.—	
Direct examination	131
Cross-examination	134
Redirect examination	143
Reichow, Oscar—	
Direct examination	101
Cross-examination	114
Redirect examination	128
Recross-examination	130
Thurston, Hollis John—	
Direct examination	145
Cross-examination	152
Redirect examination	155
Recross-examination	156
Statement of Points on Which Appellants Intend to	
Rely on Appeal (Circuit Court).....	159
Stipulation as to Certain Exhibits (Circuit Court).....	162

INDEX TO EXHIBITS

Petitioners' Exhibits:

No.	Page
1. Contract between the Hollywood Baseball Association and William Barisoff, dated March 31, 1942 (In Evidence).....	33
2. Contract between the Hollywood Baseball Association and William Barisoff, dated February 18, 1946 (In Evidence).....	35
(In Transcript)	35
3. Contract between the Bremerton Baseball Club, Inc., and William Barisoff, dated April 24, 1946 (In Evidence).....	53
4. Letter, dated January 18, 1946, to Arthur M. Lilly from W. G. Bramham (In Evidence).....	65
(In Transcript)	66
5. Contract between the Hollywood Baseball Association and Arthur M. Lilly, dated April 15, 1943 (In Evidence).....	67
6. Contract between the Hollywood Baseball Association and Arthur M. Lilly, dated February 18, 1946 (In Evidence).....	68
7. Official notice of disposition of player's contract and services sent to Arthur M. Lilly by the Hollywood Baseball Club (In Evidence).....	72
(In Transcript)	72
8. Contract between the Yakima Baseball Club, Inc., and Arthur M. Lilly, dated June 7, 1946 (In Evidence)	74
(In Transcript)	74

Petitioners' Exhibits:

No.	Page
9. Contract between the Hollywood Baseball Association and Robert I. Knudson, dated June 25, 1943 (In Evidence).....	83
10. Contract between the Hollywood Baseball Association and Robert I. Knudson, dated May 29, 1946 (In Evidence).....	83
11. Contract between the Fresno Cardinals, Inc., and Robert I. Knudson, dated June 6, 1946 (In Evidence)	83
12. Telegram, dated July 29, 1946, advising Robert I. Knudson of his release by the Hollywood Baseball Club (In Evidence).....	85
(In Transcript)	85
13. Contract between Fresno Cardinals, Inc., and Robert I. Knudson, dated August 15, 1946 (In Evidence)	86
14. Contract between the Hollywood Baseball Association and Hubert L. Dawson, dated April 15, 1943 (In Evidence).....	94
15. Contract between the Hollywood Baseball Association and Hubert L. Dawson, dated April 1, 1946 (In Evidence).....	95
16. Contract between the Yakima Baseball Club and Hubert L. Dawson, dated April 24, 1946 (In Evidence)	96

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In the District Court of the United States in and for the
Southern District of California

Central Division

No. 6321-O'C Civil

WILLIAM BARISOFF, ROBERT I. KNUDSON,
HUBERT L. DAWSON, JR., and ARTHUR M.
LILLY,

Petitioners,

vs.

HOLLYWOOD BASEBALL ASSOCIATION, a cor-
poration,

Respondent.

PETITION FOR ENFORCEMENT OF VETERANS'
REEMPLOYMENT RIGHTS

The petitioners above named respectfully allege:

I.

This petition is filed under the provisions of Section 8(e) of the Selective Training and Service Act of 1940, as amended (50 USCA App. Sec. 308(e)), and Section 7 of the Service Extension Act of 1941, as amended (50 USCA App. Sec. 357); and jurisdiction of the Court is based thereon.

II.

The respondent corporation is engaged in the baseball business, and employs and exhibits a professional baseball team, and operates and maintains a baseball park and office for the conduct of such business at Los Angeles, California, within the jurisdiction of this Court. [2]

III.

During 1942 and 1943, the petitioners left positions as baseball players in the employ of the respondent, in order to enter upon active duty, or to perform training and service under the requirements of the Selective Training and Service Act of 1940, in the United States Army, Navy or Marine Corps. Each promptly entered upon active duty in one of said armed forces, and served therein thereafter until he had satisfactorily completed his period of training and service, and received a certificate thereof, and was honorably discharged from the particular armed force in which he was serving. Within 90 days after being so discharged, each petitioner, during the years 1945 or 1946, applied for reemployment by the respondent, while qualified to perform the duties of his former position in the respondent's employ, and was duly reemployed in his former position by the respondent, as required by law.

IV.

During the year 1946, however, and within one year after the date of his said reemployment, each petitioner was discharged without cause from its employ by the respondent. The respondent has, ever since such discharge, declined and refused to employ each of the petitioners, in his former position, or in any other position, contrary to law. Due to such unlawful discharge, each petitioner has suffered a loss of wages in the amount stated in the paragraph next below, from the date of his said discharge, to this date. And in the case of those of the petitioners who seek restoration to their former positions, they will continue to suffer a loss of wages in future at the rate of their monthly wage, stated in the paragraph

next below, from the beginning of the baseball season on April 15, 1947, until they shall be so restored to respondent's employ. [3]

V.

The statistical facts concerning each petitioner's individual employment, reemployment and discharge by the respondent, the amount of his loss of wages from the date of his discharge to date, and of his service in the armed forces of the United States, are as follows:

	<u>William Barisoff</u>	<u>Robt. I. Knudson</u>
Position Played	Pitcher	Pitcher
Year First Employed by the Respondent	1940	1943
Date of Termination to Enter Armed Forces	Sept., 1942	Sept. 10, 1943
Date of Entering Active Duty in Armed Forces	Nov. 5, 1942	Jan. 11, 1944
Branch of Service Entered	U. S. Navy	U. S. Army
Date of Discharge Therefrom	Dec. 7, 1945	May 5, 1946
Date of Application for Reemployment	Feby. 1946	May 28, 1946
Date of Reemployment	Feby. 1946	June 5, 1946
Monthly Wage on Reemployment	\$300.00	\$250.00
Date of Discharge Without Cause	Feby. 19, 1946	July 29, 1946
Loss of Wages to Date	\$813.00	\$550.00
Future Loss of Wages Per Month
	<u>Hubert L. Dawson, Jr.</u>	<u>Arthur M. Lilly</u>
Position Played	3rd Base	2nd Base
Year First Employed by the Respondent	1943	1942
Date of Termination to Enter Armed Forces	July 1, 1943	July 9, 1943
Date of Entering Active Duty in Armed Forces	July 1, 1943	July 12, 1943
Branch of Service Entered	Marine Corps	U. S. Army
Date of Discharge Therefrom	April 20, 1946	January 9, 1946
Date of Application for Reemployment	April 6, 1946	January, 1946
Date of Reemployment	April 8, 1946	February, 1946
Monthly Wage on Reemployment	\$375.00	\$450.00
Date of Discharge Without Cause	April 22, 1946	May 26, 1946
Loss of Wages to Date	\$763.00	\$1,200.00
Future Loss of Wages Per Month	\$375.00	\$450.00

VI.

A common question of law and fact is involved in the individual complaints of the petitioners in that, as they understand, the respondent claims that they each held seasonal, temporary positions, and that none of the petitioners was entitled to reemployment, as a matter of law, for this reason. Also, they understand the respondent to contend that they did not perform as baseball players to the respondent's satisfaction, whereas the respondent never adequately tested their performance to discover whether, in fact, they were capable of satisfying respondent in the matter of performance.

Wherefore Petitioners Respectfully Pray:

(a) That the Court adjudge and decree that the petitioners, after their service in the armed forces, were entitled to be reemployed as baseball players in the respondent's employ at the times of their applications therefor, and were entitled not to be discharged from their restored positions without cause for one [5] year from the respective dates of their reemployment; and that the respondent's action in discharging each of them was unlawful.

(b) That the respondent be ordered, directed and specifically required: To (1) reemploy and restore petitioners Hubert L. Dawson, Jr. and Arthur M. Lilly to their positions in its employ; and, unless for cause, not to discharge them therefrom during the portion of the reemployment year of each that remained unexpired when they

were discharged; and (2) to compensate each of the petitioners for his loss of wages suffered by reason of his unlawful discharge.

(c) That petitioners recover of respondent the fees and costs of the United States herein, for its benefit.

(d) That petitioners have all such other and further relief as may be just and proper in the premises, and that they have general relief.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant U. S. Attorney

Chief of Civil Division

JAMES C. R. McCALL, JR.

Assistant U. S. Attorney

Attorneys for Petitioners [6]

[Verified.]

[Endorsed]: Filed Jan. 23, 1947. [9]

[Title of District Court and Cause]

ANSWER

Comes now the Hollywood Baseball Association, a corporation, Respondent herein, and for Answer to the Petition in the above-entitled action admits, denies and alleges as follows:

I.

Answering paragraph III of the Petition, Respondent denies that each Petitioner, during the years 1945 and/or 1946, or at any other time or at all, applying for re-employment with the Respondent, was qualified to perform the duties of his former position in the Respondent's employ. Respondent denies that the Petitioners were re-employed in their former positions as required by law. [10]

II.

Answering paragraph IV of the Petition, Respondent denies generally and specifically each and every allegation therein contained, except that Respondent admits that it discharged each of the Petitioners during the year 1946. Respondent alleges that each such discharge was for cause. Respondent admits that since such discharge it has declined and refused to re-employ each of the Petitioners. Respondent alleges that it is informed and believes and on such information and belief alleges that the Petitioners and each of them have earned wages and/or salary and/or bonuses during the periods for which they claimed re-employment rights and damages, and which wages and/or salaries and/or bonuses would not have been earned had they been re-employed by Respondent.

III.

Answering paragraph V of the Petition, the Respondent denies that any of the Petitioners were discharged without cause at any time. Respondent admits that the Petitioners were discharged on or about the dates set forth in the statistical facts of paragraph V and alleges that each such discharge was for cause. Respondent does not have sufficient information and belief to answer the allegations with respect to claimed loss of wages to date by each of the petitioners and, basing its denial on this ground denies that the Petitioners, or any of them, suffered loss of wages in the amounts set forth, or in any sum, or at all. Respondent denies that Petitioners, Dawson and/or Lilly, will suffer future loss of wages in the amounts set forth, or in any amount, or at all. Further answering paragraph V and the statistical facts set forth therein, Respondent alleges that the monthly wages, prior to the termination of employment by each of the Petitioners to enter the Armed Forces was:

For Petitioner Barisoff—\$160.00 per month;

For Petitioner Knudson—\$200.00 per month; [11]

For Petitioner Dawson—\$300.00 per month; and

For Petitioner Lilly—\$300.00 per month.

Respondent alleges that the increased figures set forth in paragraph V of the Petition, at which the Petitioners were re-employed, were based upon and contracted for by the Respondent in reliance upon the termination provisions of the respective contracts; that such re-employment wages were based upon the condition that the Petitioners and each of them would perform services worthy of such

amounts; that the Petitioners and each of them failed to perform services worthy of such amounts after re-employment by the Respondent.

IV.

Answering paragraph VI of the Petition, Respondent denies generally and specifically each and every allegation therein contained and the whole thereof.

As a Second, Separate Defense, Respondent Alleges:

I.

That Respondent owns and operates a professional baseball club which is a member of the Pacific Coast League and of the National Association of Professional Baseball Leagues; that for the purpose of providing wholesome and skilled professional baseball to the public the Respondent seeks to engage players who are capable of rendering skilled services and performing the duties required of each of them with expertness, diligence and fidelity; that by reason of Respondent's membership in the Pacific Coast League and the National Association of Professional Baseball Leagues, it is required to abide by the respective rules and regulations of such organizations and to limit the number of players which may be carried on the playing roster of the Respondent's baseball club at one time; that the Respondent from time to time has entered into contract agreements with individual baseball players possessing various degrees of skill and ability and/or professional skill and ability; [12] that all contracts by which Respondent engages baseball players provide that the same may be terminated at any time by the Respondent club or by any assignee.

II.

That it is the universal custom, practice, and usage in professional baseball to hire many more players than a baseball club is able to play; that such practice and custom is followed to encourage and develop new players and to give them assistance in embarking on careers as professional baseball players; that it is well known to the players, the employers and the general public that those who have the skill and ability remain under contract, while those who lack it in one respect or another are released from their contracts.

III.

That the nature of the Respondent's employment contract with each of the Petitioners prior to their respective entries into military service was temporary; that such employment was subject to termination at any time by the Respondent and wholly dependent upon Respondent's judgment of the capabilities and skill of the respective players; that in reliance upon the provisions of the employment contracts, the Respondent hired the Petitioners as temporary players with the hope and expectation that they would develop into skilled baseball players; that the Petitioners and each of them did not develop into skilled baseball players capable of playing on the Respondent's baseball team; that the Petitioners and each of them never developed sufficient skill and ability as baseball players to earn positions on the respondent Baseball Club.

As a Third, Separate Defense, Respondent Alleges:

I.

That Petitioners and each of them were not qualified to perform the duties of the positions, which they had temporarily held before entry into military service, after

return from such [13] service, or at any time thereafter.

As a Fourth, Separate Defense, Respondent Alleges:

I.

That since the entry of Petitioners into military service, the Pacific Coast League has become a Class AAA League; that at the time of the Petitioners' pre-service employment, the Pacific Coast League was a Class AA League; that Respondent is a member of the Pacific Coast League; that an AAA baseball league has higher standards requiring a high degree of skill and ability of the players of its member teams; that the Respondent employer's circumstances have so changed as to make it unreasonable to require the restoration of Petitioners to positions of employment.

As a Fifth, Separate Defense, Respondent Alleges:

I.

That the Petitioners and each of them were discharged by Respondent for cause, to-wit: inability to play baseball with skill and ability.

As a Sixth, Separate Defense, Respondent Alleges:

I.

That the Petitioners and each of them have waited an unreasonable length of time from the alleged unlawful discharge by Respondent in which to commence this action; that the unreasonable length of time in seeking to enforce their demands has prejudiced the Respondent.

VICTOR FORD COLLINS

Attorney for Respondent [14]

[Verified.] [15]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 1, 1947. [16]

[Title of District Court and Cause]

OPINION

Cavanah, District Judge

In the present action four veteran baseball players seek redress for alleged violations by the Hollywood Baseball Association of their statutory re-employment rights as members of the armed forces of the United States. Dawson and Lilly seek an order that they be restored to positions of employment by the respondent.

The respondent asserts that the character of the petitioners' pre-service employment was not such as to entitle them to the privileges and benefits of the Selective Training Act of 1940 as amended, for the reason that the employment of petitioners was temporary in nature, and is based upon the contention that none of them were regular members of the Hollywood Baseball Club. Instead, it is asserted that they were inexperienced and temporary players, who had been signed to contracts terminable at the will of the respondent.

It is also contended by respondent that the petitioners were not qualified to perform the duties of their positions at the time they requested re-employment, and were discharged for lack of skill and ability to play baseball in accordance with the standards of the Hollywood Club, and that the circumstances of the respondent have changed so as to make it unreasonable to require it to re-employ the petitioners, and that they have waited an unreasonable length of time before commencing their action for alleged loss of pay. As to the amount of damages claimed, respondent asserts that the petitioners have not made proper allowance for wages, salaries, and

bonuses gained during the year, which they would not have received had they remained under contract with the respondent, as the figure at which they were employed prior to their military service is the figure to be considered, for they cannot claim damages for the difference between the amounts they actually earned during the period, and the amounts they would have earned had they been retained in the employ of the respondent at the increased figure which the respondent voluntarily paid them upon their re-employment after military service.

The statute relating to the right of re-employment of one who was in the military service of the United States, provides that by Section 308, 50 U. S. C. A., "(b) In case of any such person who, in order to perform such training and service, has left or leaves a position other than a *temporary* position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for re-employment within 90 days after he is relieved from such training and service * * * after discharged for a period of not more than one year.

"(B) If such position was in the employ of a private employer, such employer shall restore such person to such [18] position or to a position of like seniority, status, and pay, unless the employer's circumstances have so changed as to make it impossible or *unreasonable* to do so." (*Italics supplied.*)

Thus, it will be seen that the statute provides when, and under what circumstances, a veteran can be re-employed in his former position and recover for loss of wages and damages. When the petitioners returned from the military service they made application to respondent for re-employment in the Club, and were re-employed—

but thereafter were released for the reasons given by the Club, that they did not meet the skill and ability required by the Club in the class and standard of the Club in the Pacific Coast League, as that League now requires a class and skill and ability of players next to the regular National League. So the inquiry here is: had the circumstances of the employer, the Club, so changed as to have made it impossible or unreasonable for the Club to have re-employed them? The requirements of the Pacific Coast League limit each Club to 25 regular men, and they cannot carry more than that when the season commences. After spring training they are allowed to select 25 men who, in their judgment, can play such a class of ball as to meet opposition. When the regular season opened, or shortly thereafter, when the petitioners assert they should have been re-employed by respondent, those who determined the qualifications of players for the Club determined that, in their judgment, petitioners could not meet the qualifications necessary to compete with opposition, and they released some and others secured employment in other Clubs.

A fair interpretation of the statute is that it does not apply to "temporary positions" or where "the employer's circumstances have so changed as to make it impossible or unreasonable to do so." [19]

Professional ball playing in Clubs in a League seems to stand out as different from ordinary activities, since regular employment of players must be determined upon their skill and ability to meet the qualifications required of the class and standard of ball in the League, and that has to be determined by the Clubs who employ them, as they are taking the chances of meeting opposition—and this is recognized when the players apply for employ-

ment, for in their contracts with the Club they expressly agree that their services are determinable at any time at the will of the Club. It seems that the player has to satisfy the Club, the employer, as to his qualifications to continue. Therefore, the statute would not apply under the evidence in this case when confronted with the exception: "other than a temporary position". It appears that when the petitioners returned and sought re-employment with the respondent, the respondent's situation in the League had changed, and the class and standard of the players had become greater and was recognized as better than when petitioners entered the military service, thereby making it impossible and unreasonable to require the respondent to re-employ them. The evidence is undisputed that a higher and greater class and standard of qualifications for players in the Pacific Coast League had developed while the petitioners were not playing, or under the control of respondent, and the statute authorized the respondent to refuse to re-employ the petitioners at the time in question.

There are cases recognized where skill and ability are the measure and yardstick of re-employment under the Act in question, and of course this case, like all others, is based upon the particular facts in the case. [20]

Thus, the conclusion is reached that, under the Act and the evidence, the respondent was not required to re-employ the petitioners at the times urged for the reasons thus expressed. Finding and decree to be entered in favor of respondent.

Dated this 10th day of March, 1947.

CHARLES C. CAVANAUGH

United States District Judge

[Endorsed]: Filed Mar. 11, 1947. [21]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled case having come on regularly for trial on the 6th day of March, 1947, in the above-entitled Court, before the Honorable Charles C. Cavanah, United States District Judge, and before the Court without a jury, Petitioners appearing in person and by their attorneys, James M. Carter, Ronald Walker, and James C. R. McCall, Jr., by James C. R. McCall, Jr., and Respondent appearing by its attorney, Victor Ford Collins by Frank J. Kanne, Jr., and evidence both oral and documentary having been introduced, and the Court having taken the matter under submission, the Court now makes its Conclusions of Law and Findings of Fact as follows: [22]

FINDINGS OF FACT

I.

That it is true that Petition herein was filed under the provisions of Section 8(e) of the Selective Training and Service Act of 1940, as amended, 50 USCA App. Section 308(e) and Section 7 of the Service Extension Act of 1941, as amended, (50 USCA App. Section 357) and jurisdiction of the Court is based thereon.

II.

That it is true that Respondent corporation is engaged in the baseball business and employs and exhibits a professional baseball team and operates and maintains a baseball park and office for the conduct of such business at Los Angeles, California, within the jurisdiction of this Court.

III.

That it is true that during 1942 and 1943, the Petitioners left positions as baseball players in the employ of the Respondent in order to enter upon active duty or to perform training and service under the requirements of the Selective Training and Service Act of 1940 in the United States Army, Navy, or Marine Corps. That it is true that each Petitioner promptly entered upon active duty in one of said armed forces and served therein thereafter until he had satisfactorily completed his period of training and service and received a certificate thereof and was honorably discharged from the particular armed force in which he was serving. That it is true that within ninety days after being so discharged from military service, each Petitioner, during the years 1945 or 1946, applied for re-employment with the Respondent corporation. That it is not true that Petitioners, or any of them, were qualified to perform the duties of their respective former positions in Respondent's employ at the time of such application for re-employment. That it is not true that each Petitioner was re-employed in his former position by the Respondent as required by [23] law. That it is true that each Petitioner was re-employed by Respondent voluntarily.

IV.

That it is not true that during the year 1946, and within one year after the date of each Petitioner's said re-employment, that each Petitioner was discharged with-

out cause from its employ by Respondent. That it is true that each Petitioner was discharged for cause, to-wit, the lack of skill and ability to play baseball according to the standards of the Hollywood Baseball Club. That it is true that Respondent has ever since each such discharge declined and refused to employ each of the Petitioners in his former position, or in any other position. That it is not true that such refusal to re-employ was contrary to law. That it is not true that each Petitioner has suffered a loss of wages in any amount or at all. That it is not true that Petitioners Dawson and Lilly will suffer a loss of wages in the future at the rate of their monthly wage, or at all, from the beginning of the baseball season on April 15, 1947. That it is true that each of the Petitioners has earned wages and/or salaries and/or bonuses which they would not have earned had they been re-employed by the Respondent corporation and the amounts of such other earnings, salaries and bonuses are as follows:

For Petitioner Barisoff	—	\$1,325.00
For Petitioner Dawson	—	\$1,583.50
For Petitioner Knudson	—	\$ 706.61
For Petitioner Lilly	—	\$3,855.00

V.

That it is true that the statistical facts concerning each Petitioner's individual preservice employment, military service, re-employment and discharge are as follows: [24]

	<u>William Barisoff</u>	<u>Robt. I. Knudson</u>
Position Played	Pitcher	Pitcher
Year First Employed by Respondent	1940	1943
Date of Termination to Enter Armed Forces	Sept. 20, 1942	Sept 15, 1943
Date of Entering Active Duty in Armed Forces	Nov. 5, 1942	Jan. 11, 1944
Branch of Service Entered	U. S. Navy	U. S. Army
Date of Discharge Therefrom	Dec. 7, 1945	May 5, 1946
Date of Application for Re-employment	Feb. 1946	May 28, 1946
Monthly Wage at Time of Entry Into Service	\$200.00	\$200.00
Monthly Wage on Re-employment	\$300.00	\$250.00
Date of Re-employment	Feb. 1946	June 16, 1946
Date of Discharge With Cause	April 1, 1946	July 29, 1946

	<u>Hubert L. Dawson, Jr.</u>	<u>Arthur M. Lilly</u>
Position Played	Third Base	Second Base
Year First Employed by Respondent	1943	1942
Date of Termination to Enter Armed Forces	June 15, 1943	August 15, 1943
Date of Entering Active Duty in Armed Forces	July 1, 1943	July 12, 1943
Branch of Service Entered	Marine Corps	U. S. Army
Date of Discharge Therefrom	April 20, 1946	January 9, 1946
Date of Application for Re-employment	April 1, 1946	January, 1946
Monthly Wage at Time of Entry Into Service	\$300.00	\$300.00
Monthly Wage on Re-employment	\$375.00	\$450.00
Date of Re-employment	April 1, 1946	February, 1946
Date of Discharge With Cause	April 15, 1946	May 26, 1946

[25]

That it is not true that the Petitioners have suffered any loss of wages to date or will suffer any future loss of wages. That it is true that each Petitioner was discharged on the date above mentioned for cause. That it

is not true that such discharges were without cause. That it is true that the figure at which each Petitioner was re-employed by the Respondent was a voluntarily negotiated figure, based upon the right and privilege of Respondent to terminate each such re-employment. That it is not true that any such re-employment figures were arrived at under compulsion of law.

VI.

That it is true that a common question of law and fact is involved in the individual Complaints of Petitioners in that they all held temporary positions with the employer prior to their military service.

VII.

That it is true that Respondent owns and operates a professional baseball club which is a member of the Pacific Coast League and of the National Association of Professional Baseball Leagues; that for the purpose of providing wholesome and skilled professional baseball to the public the Respondent seeks to engage players who are capable of rendering skilled services and performing the duties required of each of them with expertness, diligence and fidelity. That it is true that by reason of Respondent's membership in the Pacific Coast League and the National Association of Professional Baseball Leagues, it is required to abide by the respective rules and regulations of such organizations and to limit the number of players which may be carried on the playing roster of the Respondent's baseball club at one time;

that the Respondent from time to time has entered into contract agreements with individual baseball players possessing various degrees of skill and ability and/or professional skill and ability; that it is true that [26] all contracts by which Respondent engages baseball players provide that the same may be terminated at any time by the Respondent club or by any assignee.

VIII.

That it is true that it is the universal custom, practice, and usage in professional baseball to hire many more players than a baseball club is able to play. That it is true that such practice and custom is followed to encourage and develop new players and to give them assistance in embarking on careers as professional baseball players. That it is true that it is well known to the players, the employers and the general public that those who have the skill and ability remain under contract, while those who lack it in one respect or another are released from their contracts.

IX.

That it is true that the nature of the Respondent's employment contract with each of the Petitioners prior to their respective entries into military service was temporary. That it is true that such employment was subject to termination at any time by the Respondent and wholly dependent upon Respondent's judgment of the capabilities and skill of the respective players; that in reliance upon the provisions of the employment contracts,

the Respondent hired the Petitioners as temporary players with the hope and expectation that they would develop into skilled baseball players. That it is true that the Petitioners and each of them did not develop into skilled baseball players capable of playing on the Respondent's baseball team. That it is true that the Petitioners and each of them never developed sufficient skill and ability as baseball players to earn positions on the respondent Baseball Club.

X.

That it is true that Petitioners and each of them were not qualified to perform the duties of the positions, which they had temporarily held before entry into military service, after return [27] from such service, or at any time thereafter.

XI.

That it is true that since the entry of Petitioners into military service, the Pacific Coast League has become a Class AAA League; that it is true that at the time of the Petitioners' preservice employment, the Pacific Coast League was a Class AA League. That it is true that Respondent is a member of the Pacific Coast League. That it is true that an AAA baseball league has higher standards requiring a high degree of skill and ability of the players of its member teams. That it is true that the Respondent employer's circumstances have so changed as to make it unreasonable to require the restoration of Petitioners to positions of employment.

XII.

That it is true that the Petitioners and each of them were discharged by Respondent for cause, to-wit: inability to play baseball with skill and ability.

XIII.

That it is true that the Petitioners and each of them have waited an unreasonable length of time from the alleged unlawful discharge by Respondent in which to commence this action. That it is true that the unreasonable length of time in seeking to enforce their demands has prejudiced the Respondent.

As Conclusions of Law therefor, the Court finds:

CONCLUSIONS OF LAW

That Respondent corporation is entitled to Judgment and Decree that the Petitioners and each of them take nothing by their Petition and that Judgment and Decree be entered in favor of Respondent.

Dated: This 25th day of March, 1947.

CHARLES C. CAVANAH

Judge [28]

Received copy of the within Findings of Fact and Conclusions of Law this 18 day of March, 1942. James M. Carter, U. S. Attorney; by Gertrude M. Johnson, Attorneys for Petitioners.

[Endorsed]: Filed Mar. 25, 1947. [29]

In the District Court of the United States in and for the
Southern District of California

Central Division

No. 6321-O'C Civil

WILLIAM BARISOFF, ROBERT I. KNUDSON,
HUBERT L. DAWSON, JR., and ARTHUR M.
LILLY,

Petitioners,

vs.

HOLLYWOOD BASEBALL ASSOCIATION, a cor-
poration,

Respondent.

DECREE

The above-entitled case having come on regularly for trial on the 6th day of March, 1947, in the above-entitled Court, before the Honorable Charles C. Cavanah, United States District Judge, and before the Court without a jury, Petitioners appearing in person and by their attorneys, James M. Carter, Ronald Walker, and James C. R. McCall, Jr., by James C. R. McCall, Jr., and Respondent appearing by its attorney, Victor Ford Collins by Frank J. Kanne, Jr., and evidence both oral and documentary having been introduced, and the Court having taken the matter under submission and having made its written Findings of Fact and Conclusions of Law;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that Petitioners take nothing by their Petition and that [30] Judgment and Decree be entered in favor of Respondent corporation.

Dated: This 25th day of March, 1947.

CHARLES C. CAVANAH

Judge

Judgment entered Mar. 25, 1947. Docketed Mar. 25, 1947. Book C. O. B. 42, page 292. Edmund L. Smith, Clerk; by Francis E. Cross, Deputy.

Received copy of the within decree this 18 day of March, 1947. James M. Carter, U. S. Attorney; by Gertrude M. Johnson, Attorneys for Petitioners.

[Endorsed]: Filed Mar. 25, 1947. [31]

[Title of District Court and Cause]

NOTICE OF APPEAL

Notice is hereby given that the above named petitioners William Barisoff, Robert I. Knudson, Hubert L. Dawson, Jr. and Arthur M. Lilly, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment entered in this case on March 25, 1947, denying *petitioner* relief, this 23rd day of June, 1947.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant U. S. Attorney

Chief of Civil Division

By James C. R. McCall, Jr.

Assistant U. S. Attorney

Attorneys for Petitioners.

[Endorsed]: Filed & mld. copy to Victor Ford Collins
Jun. 23, 1947. [32]

[Title of District Court and Cause]

ORDER EXTENDING TIME ON APPEAL

It appearing to the Court from the affidavit of James C. R. McCall, Jr., that the reporter's transcript of proceedings cannot be completed and filed in this case in time to permit filing the record on appeal and docketing the action in the United States Circuit Court of Appeals for the Ninth Circuit within 40 days from the notice of appeal, upon application of the petitioners-appellants,

It is Ordered, Adjudged and Decreed that the time for filing the record on appeal and docketing the case in the appellate court be and is extended to and including the 15th day of August, 1947. This July 11, 1947.

J. F. T. O'CONNOR

United States District Judge

[Endorsed]: Filed Jul. 11, 1947. [33]

[Title of District Court and Cause]

ORDER AS TO ORIGINAL EXHIBITS

It appearing to the Court that the original exhibits in this case should be inspected by the Appellate Court, but that they are primarily contracts between various baseball associations and players on printed forms, and that the copying of the same would be an unnecessary expense, and the said exhibits should be sent to the Appellate Court in lieu of copies,

It Is Ordered, Adjudged and Decreed by the Court that the Clerk of the Court will transmit the original exhibits in this case to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, along with the transcripts of the record on appeal, but without copying such exhibits, and that said exhibits be returned to the Clerk of this Court upon the conclusion [34] of the proceedings in the Appellate Court. This July 31, 1947.

J. F. T. O'CONNOR

United States District Judge

[Endorsed]: Filed Jul. 31, 1947. [35]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 38 inclusive contain full, true and correct copies of Petition for Enforcement of Veterans' Reemployment Rights; Answer; Opinion, Findings of Fact and Conclusions of Law; Decree; Notice of Appeal; Order Extending Time on Appeal; Order as to Original Exhibits and Designation of Contents of Record on Appeal which, together with copy of Reporter's Transcript of Proceedings on March 6 and 7, 1947 and Original Exhibits Nos. 1 to 16, inclusive, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 11th day of August, A. D. 1947.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Title of District Court and Cause]

Honorable Charges C. Cavanah, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, March 6, 1947

Appearances:

For the Government: James M. Carter, United States Attorney, Ronald Walker, Assistant United States Attorney; by James C. R. McCall, Jr., Assistant United States Attorney.

For Respondent: Victor Ford Collins, Esq., and Arnold M. Cannon, Esq., 111 West Seventh Street, Los Angeles, California; by Frank J. Kanne, Jr., Esq.

Los Angeles, California; March 6, 1947; 10:00 o'clock a. m.

The Court: Are you ready in the case set forth this morning?

Mr. McCall: Yes, your Honor.

Mr. Kanne: Ready, your Honor.

The Court: Proceed.

Mr. McCall: Mr. Barisoff.

WILLIAM BARISOFF

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: William Barisoff.

The Clerk: Will you take the stand, please?

The Court: What is the name?

(Testimony of William Barisoff)

The Witness: William Barisoff.

The Court: Barisoff.

Mr. McCall: If it please your Honor, I do not presume there is any necessity for reviewing the pleadings, is there?

The Court: Well, you might briefly do so.

Mr. McCall: All right, sir.

(Opening statement by counsel.)

Mr. Kanne: Your Honor, do you wish our statement at this time? [4*]

The Court: You may do so, if you wish.

Mr. Kanne: Thank you.

(Statement of issues by counsel for respondent.)

The Court: All right, proceed.

Direct Examination

By Mr. McCall:

Q. You stated your name: Mr. William Barisoff?

A. Yes, sir.

Q. You are a petitioner in this case?

A. Yes, sir.

Q. Now, Mr. Barisoff, will you state to the court your age?

A. Twenty-five.

Q. How long have you been playing professional baseball?

A. Four years.

Q. You began, then, when you were 21 years of age?

A. Eighteen.

Q. Eighteen. You mean you have played four seasons, is that right?

A. Four seasons, that's right; three years in the Navy.

(Testimony of William Barisoff)

Q. You began playing seven years ago?

A. Yes, sir.

Q. Where did you first play?

A. Salina, Kansas. [5]

Q. What year was that? A. 1940.

Q. Were you at that time under contract to Hollywood in any way in the year 1940?

A. Yes, under option to Salina, Kansas.

Q. In other words, you had a contract to play with Hollywood for that season? A. Yes.

Q. And you say they optioned you out to Salina?

A. Yes, sir.

Q. Was the option price the same as the price at which you had been contracted to Hollywood?

A. Yes, sir.

Q. What were you drawing? A. \$150.

Q. Did you play the entire season there?

A. Yes, sir.

Q. Where did you play in 1941?

A. San Bernardino and Santa Barbara.

Q. Were you under contract in that year with the Hollywood Baseball Club? A. Yes, sir.

Q. And you were farmed out? Was that the expression used? A. Farmed out, yes. [6]

Q. Farmed out by Hollywood to Santa Barbara?

A. First to San Bernardino and then San Bernardino broke up, and then they put me in Santa Barbara. It was in the same league.

Q. I see. Where did you play the next year?

A. Anniston, Alabama.

(Testimony of William Barisoff)

Q. Anniston, Alabama. Were you under contract with Hollywood for that year? A. Yes, sir.

Q. And were farmed out to Anniston, Alabama?

A. Yes, sir. I stayed there a month, and they recalled me back to Hollywood.

Q. After you were recalled to Hollywood, did you play any games with the Hollywood team?

A. Not many.

Q. In Anniston and these other teams that you have mentioned to which you had been farmed out, were you a regular member of the team on the regular line-up?

A. Yes, sir.

Q. And played in every game or a large number of them? A. A large number of them.

Q. I see. Now, after you had been recalled by Hollywood in 1942, how long did you remain here?

A. About a month and a half.

Q. Then what happened? [7]

A. They sent me to Fort Worth, Texas.

Q. Fort Worth, Texas. Did you play on the regular line-up for that team? A. Yes, sir.

Q. How long did you stay there?

A. About a month.

Q. Where were you playing during the year 1942 when you were here in Hollywood? What position?

A. Well, I was either pitching or playing the outfield.

Q. Were you used in both positions?

A. Yes, sir.

Q. How about the position that you were playing in Fort Worth?

A. Well, I played outfield mostly out there. I just pitched about one game.

(Testimony of William Barisoff)

Q. I see. The teams that you have been playing with: did you play the same way, both as pitcher and outfielder?

A. The same way, outfield and pitching.

Q. All right. Now, when did you enter the Army, I mean the Navy?

A. '42, November.

Q. In November after the close of the season?

A. After the season was over.

Q. At that time were you under contract to Hollywood [8] to play for them the next season?

A. Well, I still belonged to them. They didn't release me.

Q. I see. I hand you a contract between the Hollywood Baseball Association and William Barisoff, dated March 31, 1942.

Will you examine that? Is that the contract under which you played in the season 1942?

A. Yes, sir.

Mr. McCall: I will offer that, your Honor, in evidence as Petitioners' Exhibit 1.

The Clerk: Petitioners' Exhibit 1 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 1.)

By Mr. McCall:

Q. Now, how long did you remain in the Navy?

A. Three years.

Q. Did you play on service teams?

A. Two years, two years out of the three.

Q. Two years out of the three you were in the service?

A. Yes.

(Testimony of William Barisoff)

Q. During the season 1943, the summer of 1943, did you play with the San Diego Training Station team?

A. Yes, sir.

Q. What positions did you play? [9]

A. Pitched and played the outfield.

Q. What about in the season 1944? With what service team did you play?

A. I was stationed down at the Sea Bee Base at Camp Endicott, Rhode Island.

Q. In 1945 did you play baseball? A. No, sir.

Q. What were you doing in the summer of 1945?

A. Went overseas.

Q. Now, when you were released from service—

A. Pearl Harbor Day, December 7, 1945.

Q. —was that—do you have your discharge paper?

A. Yes, sir.

Mr. McCall: Is there any question about his honorable discharge?

Mr. Kanne: That is admitted by the respondent.

Mr. McCall: All right.

Q. By Mr. McCall: After you were discharged from the Navy did you apply to the Hollywood Baseball Club for reemployment? A. Yes, sir.

Q. When did you apply?

A. Well, I think it was in December when I phoned them up, and they wrote a letter and reinstated me.

Q. I hand you a paper which is a contract between the [10] Hollywood Baseball Association and William Barisoff, dated February 18, 1946; and I will ask you if that is the contract that you entered into for the playing of baseball in 1946.

A. Yes, sir.

(Testimony of William Barisoff)

Mr. McCall: I will ask that that be made Exhibit 2.

The Clerk: In evidence?

Mr. McCall: Yes.

The Clerk: Petitioners' Exhibit No. 2 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 2.)

[PLAINTIFFS' EXHIBIT NO. 2]

CONTRACT

Class AAA

Approved by the

NATIONAL ASSOCIATION

of

PROFESSIONAL BASEBALL LEAGUES

UNIFORM PLAYER'S CONTRACT

Important Notices

The attention of both Club and Player is specifically directed to the following excerpt from Rule 3(a), of the Major-Minor League Rules:

"No Club shall make a contract different from the uniform contract and no club shall make a contract containing a non-reserve clause, except permission first be secured from the Executive Committee or the Advisory Council. The making of any agreement between a Club and Player not embodied in the contract shall subject both parties to discipline by the Commissioner or the Executive Committee."

A copy of this contract when executed must be delivered to player either in person or by registered mail, return receipt requested.

(Plaintiff's Exhibit No. 2)

Parties

The Hollywood Baseball Association, herein called the Club and William Barisoff of Los Angeles, California, herein called the Player.

Recital

The Club is a member of the National Association of Professional Baseball Leagues. As such, and jointly with the other members of the National Association of Professional Baseball Leagues, it is a party to the National Association Agreement, and to the Major-Minor League Agreement and Rules with the American League of Professional Baseball Clubs and its constituent clubs and with the National League of Professional Baseball Clubs and its constituent clubs, and is a party to the Constitution and By-Laws of the league of which the club is a member. The purpose of these agreements, rules, Constitutions and By-Laws is to insure to the public wholesome and high-class professional baseball by defining the relations between club and player, between club and club, between league and league and by vesting in a designated Commissioner, Executive Committee and President of the National Association, broad powers of control and discipline and decision in cases of disputes.

Agreement

In view of the facts above recited the parties agree as follows:

Employment

1. The Club hereby employs the Player to render skilled service as a baseball player in connection with all

(Plaintiff's Exhibit No. 2)

games of the Club during the year 1946 including the Club's training season, the Club's exhibition games, the Club's playing season, and any official series in which the Club may participate and in any games or series of games in the receipts of which the Player may be entitled to share; and the Player covenants that he is capable of and will perform with expertness, diligence and fidelity the service stated and such duties as may be required of him in such employment.

Salary

2. For the service aforesaid the Club will pay the Player an aggregate salary of \$300.00 per month, as follows:

In semi-monthly installments after the commencement of the playing season covered by this contract, unless the Player is "abroad" with the Club for the purpose of playing games, in which event the amount then due shall be paid on the first week day after the return "home" of the Club, the terms "home" and "abroad" meaning, respectively, at and away from the city in which the Club has its baseball field.

If a monthly salary is stipulated above, it shall begin with the commencement of the Club's playing season (or such subsequent date as the player's service may commence) and end with the termination of the Club's scheduled playing season, including split-season play-off series, and shall be payable in semi-monthly installments as above provided.

If the player is in the service of the Club for part of the playing season only he shall receive such proportion

(Plaintiff's Exhibit No. 2)

of the salary above mentioned, as the number of days of his actual employment in the Club's playing season bears to the number of days in said season.

Loyalty

3. (a) The Player during said season will faithfully serve the Club or any other Club to which, in conformity with the agreements above, or hereinafter recited, this contract may be assigned, and pledges himself to the American public to conform to high standards of personal conduct, fair play and good sportsmanship.

(b) The Player represents that he does not, directly or indirectly, own stock or have any financial interest in the ownership or earnings of any club, except as herein expressly set forth, and covenants that he will not hereafter, while connected with any club, acquire or hold any such stock or interest except in accordance with the Major-Minor League Rules.

Service

4. (a) The Player agrees that, for the purpose of avoiding injuries and to remain in physical condition to perform the services he has contracted with the club to perform, while under contract or reservation he will not play baseball otherwise than for the Club or for such other Clubs, as may become assignees of this contract in conformity with said agreement; that he will not engage in professional boxing or wrestling; and that, except with the written consent of the Club or its assignee he will not engage in any game or exhibition of football, basketball, hockey, or other athletic sport.

(Plaintiff's Exhibit No. 2)

(b) The Player agrees that while under contract or reservation he will not play in any post-season baseball game except in conformity with the National Association Agreement and Major-Minor League Rules and that he will not play in any such baseball game after October 31st of any year until the following spring training season, or with or against any ineligible player, or team.

Assignment

5. (a) In case of assignment of this contract to another Club the Player shall promptly report to the assignee club; accrued salary shall be payable when he so reports; and each successive assignee shall become liable to the Player for his salary during his term of service with such assignee, and the Club shall not be liable therefor. If the transaction of transfer of services is between two clubs of the same classification in the National Association of Professional Baseball Leagues, the salary rate shall be as first specified in contract. If the assignee is any other club, the salary rate shall be the same as that usually paid by said club to other players of like ability. The foregoing shall apply not only in case of assignment of this contract to another club, but also when the transfer is to a club which the club (party hereto) owns or controls. A subsequent retransfer by such subsidiary to the club (party hereto), either the same season or thereafter, shall not entitle the Player to be paid any salary lost by the Player as a result of such transfer or transfers.

(Plaintiff's Exhibit No. 2)

Termination

(b) This contract may be terminated at any time by the Club or by any assignee by giving official release notice to the player.

Regulations

6. The Player and the Club accept as part of this contract the regulations printed on the third page hereof and also such reasonable modifications of them and such other regulations as the National Association or Club may announce from time to time.

Agreements and Rules

7. (a) The National Association Agreement and the Major-Minor League Agreement and Rules, and the Constitution and By-Laws of the League of which the Club is a member, and all amendments thereto hereafter adopted, are hereby made a part of this contract, and the Club and Player agree to accept, abide by and comply with the same and all decisions of the President of the National Association, the Executive Committee and Commissioner pursuant thereto.

(b) It is further expressly agreed that, in consideration of the rights and interest of the public, the Club, the League President, the President of the National Association, the Executive Committee or the Commissioner may make public the record of any inquiry, investigation or hearing held or conducted, including in such record all evidence or information given, received or obtained in connection therewith, and including further the findings and decisions therein and the reasons therefor.

(Plaintiff's Exhibit No. 2)

Renewal

8. (a) Each year, on or before March 1st (or if Sunday, then the succeeding business day) next following the playing season covered by this contract, by written notice to the Player, the Club or any assignee thereof, may renew this contract for the term of that year except that the salary rate shall be such as the parties may then agree upon.

(b) In default of agreement by the parties, the salary rate shall be determined as provided in paragraph 9, but pending such determination and final decision rendered, the Player will accept the salary rate fixed by the Club or else will not play otherwise than for the Club or for an assignee hereof.

(c) The reservation to the Club, expressly granted and agreed to by the Player, of the valuable and necessary right to renew this contract and to fix the salary rate for the succeeding year, and the promise of the Player not to play during said year otherwise than with the Club or an assignee hereof, have been taken into consideration in determining the aggregate or monthly salary specified herein and the undertaking by the Club to pay said salary is the consideration for the Player's services, the reservation, and renewal option granted and promise made.

Disputes

9. In case of disputes between the Player and the Club or any assignee hereof arising under the provisions of this contract the same shall be referred to the Executive Committee or the Commissioner as the case may be, as an

(Plaintiff's Exhibit No. 2)

umpire, and the Committee's decision shall be accepted by all parties as final, subject only to such right of appeal, as is given to the Player only, under the terms of the National Association Agreement and Major-Minor League Agreement and Rules.

10. The Club and Player covenant that this contract fully sets forth all oral or written understandings and agreements between them, and agree that no other alleged understandings or agreements, whether heretofore or hereafter made, shall be valid, recognizable, or of any effect whatsoever, unless expressly set forth in a new or supplemental written contract executed by the Player and the Club (acting by its president—and that no other Club officer or employee shall have any authority to represent or act for the Club in that respect), complying with all agreements and rules to which this contract is subject, and approved by the President of the National Association.

Special Covenants See "Important Notice" above

11. This contract is subject to Federal or State legislation, regulations, executive or other official orders, or other governmental action, now or hereafter in effect, respecting military, naval, air or other governmental service, which may, directly or indirectly, affect the Player, the Club or the League; and subject also to all rules, regulations, decisions or other action by the National Association, the League, the Commissioner, the President of the National Association, the Major-Minor League Advisory Council, or the League President, including the right of the Commissioner or the President of the National Association to suspend the operation of this contract during any national emergency.

(Plaintiff's Exhibit No. 2)

12. A copy of this contract and constituent part thereof referred to in Section 7(a) hereof, will be furnished the player upon his request made to either the Club or the President of the National Association at the time of executing same or any time during the life of the contract.

13. This contract shall not be valid or effective unless and until approved by the President of the National Association.

Signed this eighteenth day of February, A. D., 1946.

Seal HOLLYWOOD BASEBALL ASSOCIATION

By Victor Ford Collins


President

William Barisoff

Player Sign Here

3136 Farnsworth Ave Los Angeles, Calif

Player's Home Address—Street and City

 Players must sign Correct Name, giving their Initials and Street and Home City Address

Consent of Parent or Guardian

Consent is given to the minor player executing this contract and any renewals thereof as may be necessary under Sections 5 and 8 of the above contract, without any further renewals of this consent.

Parent-Guardian

 Social Security No. 512-14-2014

(Plaintiff's Exhibit No. 2)

Notice: If player is to receive any extra compensation as bonus, salary, or otherwise from the signing Club or, from any other source whatsoever, which is not set forth on page one of this contract, it must be inserted below, giving name of payor, amount of payment, when to be paid, etc.

[Stamped]: None

CLUB PRESIDENT'S AFFIDAVIT

State of California

County of Los Angeles

Victor Ford Collins, the undersigned Club President, hereby certifies that all of the compensation player William Barisoff is receiving, or has been promised in the form of salary, transportation (except transportation expenses for one person from the player's home or point of departure to the city to which he is directed to report), allowance, bonus of whatsoever nature, or otherwise from the Hollywood club, or through or from any other club, person, agent, or corporation or to be paid prior to the execution of said contract, during the life thereof or thereafter for services rendered to said club, or incident to such service, is set forth fully in the contract to which this affidavit is attached.

Affiant makes this affidavit with full knowledge that if its contents be found false the club which affiant repre-

(Plaintiff's Exhibit No. 2)

sented may be fined not to exceed Five Hundred (\$500) Dollars and its Club President and/or any person whom he permits to sign this affidavit in the club's behalf suspended from further participation in National Association affairs for a period of two years from the date final decision was rendered finding said affidavit to have been false.

Victor Ford Collins
President

Subscribed and sworn to before me this 19th day of
February, 1946

(Seal)

Elias Nansfield

Notary Public in and for Said County and State.

REGULATIONS

1. The Club's playing season for each year covered by this contract and all renewals hereof shall be as fixed by the League of Professional Baseball Clubs of which the contracting Club is a member.
2. The Player must keep himself in first class physical condition and must at all times confirm his personal conduct to standards of good citizenship and good sportsmanship.
3. The Player, when requested by the Club, must submit to a complete physical examination at the expense of the Club and, if necessary, to treatment by a regular physician or dentist in good standing at the Player's expense. For refusal of the Player to submit to a complete medical or dental examination the

(Plaintiff's Exhibit No. 2)

Club may consider such refusal as a violation of this regulation and may take such action as it deems advisable under regulation 7 of this contract. Disability directly resulting from injuries sustained while rendering service under this contract shall not impair the right of the Player to receive his full salary for a period not exceeding two weeks from the date of his injury, at the termination of which he may be released or continued on the salary roll. Any other misconduct may be ground for suspending or terminating this contract at the discretion of the Club.

4. A Player who sustains an injury while playing baseball for his Club must serve written notice upon his Club of such injury, giving time, place, cause and nature of the injury within ten days of the sustaining of such injury.
5. The Club will furnish the Player with uniform, exclusive of shoes. Upon the termination of the championship playing season or release of the Player the Player agrees to surrender the uniform or uniforms to the Club.
6. The Club will provide and furnish the Player during spring training with proper board and lodging and while "abroad" or traveling with the Club in other cities during spring training or the playing season, with proper board, lodging, and pay all proper and necessary traveling expenses, including Pullman accommodations when necessary and meals en route.

(Plaintiff's Exhibit No. 2)

7. For violation by the Player of any rule or regulation, the Club may impose a reasonable fine and deduct the amount thereof from the Player's salary, or may suspend the Player without salary or both, at the discretion of the Club, but if suspension exceeds ten days the Player may appeal to the President of the National Association.
8. In order to enable the Player to fit himself for his duties under this contract, the Club may require the Player to report for practice at such places as the Club may designate, and to participate in such exhibition contests as may be arranged by the Club for a period of 38 days prior to the playing season without any other compensation than that herein elsewhere provided, the Club, however, to pay the rail traveling expenses, including Pullman accommodations, if available, otherwise only such transportation as may be available will be required, and meals en route of the Player from his home city to the training place of the Club (but not in cases where Club trains at home) whether he be ordered to go to the training camp direct or by way of the home city of the Club. In the event of the failure of the Player to report for practice or to participate in the exhibition games, as provided for, a penalty by way of fine may be imposed by the Club, the same to be deducted from the compensation stipulated herein.

(Plaintiff's Exhibit No. 2)

9. Any Club, member of this Association, assigning a Player's contract to another Club in the National Association during the playing season shall be responsible for the Player's salary, under his contract, up to and including the day notice of such assignment is served upon him, and in addition for the number of days' travel required by the Player, if he promptly reports to the Club to which his contract is assigned. The number of days' travel allowed shall be determined by the number of days which would be required by the use of the transportation furnished by the Club, and the Player's salary with the assignee Club shall begin the day the Player reports to the assignee Club.
10. Any Manager, Player or Umpire, asserting any claim against any person or organization in professional baseball must file an itemized statement of same with the league of which the creditor is a member within 120 days of the maturity of the claim. If league president fails to render decision, or if adverse to either party, the party against whom decision is rendered may appeal to the President of the National Association within 30 days. If assertion of claims be by any league or club against any league or club claims must be filed within 120 days with the President of the National Association. (See Sec. 10-11-12, Article 6, National Association Agreement, for further information.)

(Plaintiff's Exhibit No. 7)

CLASS AAA
NATIONAL ASSOCIATION
PLAYER'S CONTRACT

..... League

of

THE NATIONAL ASSOCIATION
of
PROFESSIONAL BASEBALL LEAGUES

..... Baseball Club

with

..... Player

Approved and Recorded

Feb 24 1946

W. G. Bramham

President of the National Association

June 17th, 1946

..... League President

Case No. 6321 O'C Civil. Wm. Barisoff vs. Hollywood Baseball Assoc. Plf. Exhibit. Date 3/6/47. No. 2 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

No. 11706. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 12, 1947. Paul P. O'Brien, Clerk.

(Testimony of William Barisoff)

By Mr McCall:

Q. Now, this contract provides, does it not, for a monthly salary? A. Yes, sir.

Q. Of how much? A. \$300.

Q. \$300 per month? A. Yes, sir.

Q. After entering into that contract with the Hollywood Club, did you attend the spring training of the club? A. Yes, sir.

Q. Where was the spring training held in 1946?

A. Ontario, California.

Q. How long were you there?

A. About six weeks. [11]

Q. After that time was training continued at Gilmore Stadium in Hollywood?

A. I think they finished the last week up there.

Q. The last week. By the way, your contract did not call for payment for the period that you were in training? A. No, sir.

Q. You got no pay for the spring training?

A. Just expenses is all.

Q. All right. Now, after you came back to Los Angeles were you released by the club?

A. Yes, sir, about three days before the league opened.

Q. Before the playing season started?

A. That's right.

Q. When did the playing season start in 1946?

A. March 29th.

Q. You were released on about what date?

A. About the 26th.

Q. About the 26th. How were you released? What happened at the time you were released?

(Testimony of William Barisoff)

The Court: What year was that? I did not hear you.

Q. By Mr. McCall: What happened? In what manner were you notified that you had been released?

A. Oh, the manager, Buck Fausett, he called me in the clubhouse and just told me I was released. He just said he didn't have any use for me, not any use for me, but that he [12] like me, and all that; he just couldn't see me on the ball club, I mean there was so many men.

Q. He had so many men. Were you permitted to play in any games at Hollywood?

A. I got in a few games.

Q. I mean in the regular playing season.

A. No, sir.

Q. You played at these training games?

A. Yes.

Q. Out in the field? But you were not allowed to play in any regular game?

Q. Yes.

A. No. I was released before the league games started.

Q. I see. Now, under this contract you were required, I believe, to play baseball for the Hollywood Club or for any club to whom they might assign you, is that right?

A. Yes, sir.

Q. Did they offer to assign you to any club at this time, at the time you were released?

A. Well, they said they would try.

Q. They said what?

A. They said they would try.

Q. Mr. Fausett said so?

A. No, I think Mr. Reichow said that. [13]

(Testimony of William Barisoff)

Q. They said they would try to assign you to another club, is that right? A. Yes.

Q. All right. After you were released did you secure employment with another club?

A. Yes, sir, the Bremerton Baseball Club.

Q. Is Bremerton in another league or not?

A. Yes, sir, it is the Western International League.

Q. That is a Class B league, is it? A. Yes, sir.

Q. What club is the Hollywood Club a member of?

A. The AAA.

Q. What league is it? A. Coast League.

Q. Pacific Coast League?

A. Pacific Coast League.

Q. I see. Did you secure this employment through your own application with the Bremerton Club?

A. No. I got in touch with the trainer from Oakland.

Q. I show you a paper which purports to be a copy of a contract between the Bremerton Baseball Club, Inc., and William Barisoff, dated April 24, 1946.

I will ask you whether or not that is a copy of the contract that you entered into with the Bremerton Club.

A. Yes, sir. [14]

Q. Is that the date on which you went to work for them: April 24th?

A. No, I don't think it's April 24th because it starts—the league started April 26th.

Q. 26th?

A. They just made a mistake on this.

(Testimony of William Barisoff)

Q. Let me ask you: did you receive any money from the Hollywood Club under your contract?

A. Yes, sir, \$150 for two weeks when the season started.

Q. Of the playing season? A. Yes, sir.

Q. But you were not called on to play and you did not report? A. That's right.

Q. You had already been told that you were released, is that right? A. That's right.

Q. When was the \$150 actually paid?

A. As soon as I got my release.

Q. On the day that you were released?

A. Yes.

Q. I see. Did you go to Bremerton then and play from April 26th on? A. Yes, sir. [15]

Q. Did you play the full season? A. Yes, sir.

Q. When did the season at Bremerton stop?

A. September 8th.

Mr. McCall: If your Honor please, I would like to introduce in evidence a copy of the contract with the Bremerton Club.

The Clerk: Petitioners' Exhibit 3 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 3.)

Q. By Mr. McCall: That contract was for what amount of money? A. \$175 a month.

Q. For how long did the 1946 season of the Hollywood Club last?

A. I think it was from March 29th to September 22nd.

Q. Of 1946? A. That's right.

(Testimony of William Barisoff)

Q. And these payments you get paid—

A. (Interposing) Every two weeks.

Q. Every two weeks. And you get paid for each day that you play, each day that passes, on the basis of your monthly salary, is that right?

A. That's right.

Q. All right. Now, how many games did you participate [16] in during the season with Bremerton?

A. 131 games.

Q. What position did you play with them?

A. I went there as a pitcher, but they switched me to the outfield and I stayed there as an outfielder.

Q. You played nearly all the season there as an outfielder? A. Yes, sir.

Q. Which particular position? A. Right field.

Q. Right field. How was your fielding? Did you field all right, or not? A. It was all right.

Q. What about your hitting record?

A. Well, I hit .340, 40 home runs and 18 triples and 155 R. B. I.'s.

Q. You mean you drove in 150 runs for Bremerton for the season? A. That's right.

Q. In 131 games? A. That's right.

Q. You say you knocked 40 home runs?

A. Yes, sir.

Q. Did that set a new record in that league?

A. Yes, sir. The old record was 37 home runs. [17]

Q. What about the 18 triples that you got? Did that set a new record for triple base hits?

A. Yes, sir.

(Testimony of William Barisoff)

Q. In that league?

A. It was 17, the old record; and I broke it by one: 18.

Q. You say you were batting .340? A. .340.

Q. Now, what does ".340" mean? Do you know how they arrive at this figure of .340?

A. By the base hits I got.

Q. Well, I mean they take the number of times that you are at bat? A. That's right.

Q. The number of times that you secure at least one base hit? A. That's right.

Q. And get to base by a hit, is that right?

A. Yes, sir.

Q. And by dividing the figure in there, the batting average of .35 is arrived at, is that right?

A. That's right.

Q. In other words, ".340" means that in substance you got a 1-base hit or better for every third time you were at bat, is that right? [18] A. Yes, sir.

Q. All right. Did you receive any bonus for signing the agreement?

A. No, sir, just 10 per cent sale price, that's all. I got that after the season was over.

Q. You mean there was a provision in the contract—let me read the provision. The provision attached to the contract reads as follows:

"If player is to receive any extra compensation as bonus, salary, or otherwise from the signing Club or from any other source whatsoever, which is not set forth on page 1 of this contract, it must be inserted below,

(Testimony of William Barisoff)

giving name of payor, amount of payment, when to be paid, etc. . . . ”

Under which is written:

“10% of Sale Price to be paid to player when sold.”

A. That's right.

Q. That was the provision. Now, after the season with Bremerton was over, were you sold for the 1947 season by Bremerton to any club?

A. Yes, sir the New York Giants.

Q. The New York Giants. And what was the sale price?

A. It was \$12,000, but it was \$4000 down and \$8000 on a 30-day look with Minneapolis. [19]

Q. A 30-day look means that you would go with Minneapolis and play for 30 days, and if they liked you they would pay the other \$8000?

A. That's right.

Q. In other words, \$4000 was paid down with an option to purchase you at \$12,000?

A. That's right.

Q. Have you received any portion of that \$4000 which was paid? A. Yes, sir, \$400.

Q. When did you receive that?

A. I think it was about December.

Q. Of 1946? A. Yes.

Q. Are you planning to go to Minneapolis for the playing season? A. Yes, sir.

Q. When does spring training start there?

A. March 9th.

Q. Of 1947? A. That's right.

Mr. McCall: I think that is all.

(Testimony of William Barisoff)

Cross Examination

By Mr. Kanne:

Q. On your direct examination you testified to having [20] played for the Salina team in 1940?

A. Yes, sir.

Q. What league classification was that team a member of? A. "C."

Q. That is the Kansas team?

A. Salina, Kansas.

Q. And the San Bernardino team in 1941?

A. Yes, sir.

Q. What league was that?

A. That was the California state league "C" ball.

Q. And the Santa Barbara team?

A. Yes, sir. The San Bernardino broke up; so the Hollywood put me with the Santa Barbara.

Q. Did you play for Santa Barbara?

A. Yes, sir.

Q. What league is it in?

A. The same league.

Q. The "C" league? A. Yes.

Q. In 1942 at Anniston, Alabama, what league is that club in? A. Class "B."

Q. What league is it?

A. The Southeastern league. [21]

Q. You testified that you received \$175 per month from Bremerton starting on April 26, 1946.

You don't have the figures of how much the total salary that you received from the Bremerton Club in 1946 was? A. You mean the tax?

Q. Pardon? A. The tax?

(Testimony of William Barisoff)

Q. No, no, what your stipulated rate of pay was and what you received and add to that any withholding amounts, not just your take-home pay, but the total of the agreed amount that you were to receive.

A. Yes, I got that. I got it.

Q. What was that figure?

A. They put the \$400 in.

Q. Pardon?

A. I don't know. I got it at home.

Q. You stayed with the Bremerton team, though, from April 26 of 1946 to the end of the season, is that correct?

A. Yes, sir.

Q. What date did you say the season ended? On September 8th, is that correct?

A. September 8th.

Q. You did receive pay at the rate of \$175 per month for that period of time?

A. Yes, sir. [22]

Mr. Kanne: That is all.

Redirect Examination

By Mr. McCall:

Q. What is the classification of the league, the Pacific Coast League?

A. AAA.

Q. Now, at the first time you started playing with them what was the classification of that Pacific Coast League?

A. AA.

Q. AA?

A. AA.

Q. Now, what class of league is the Minneapolis team?

A. It is an AAA, the same as the Pacific Coast League.

Q. Minneapolis?

A. Yes.

Mr. McCall: All right, that is all.

The Court: When you went over to the New York Giants, how long did you remain there?

The Witness: They just bought me this last year. I haven't been over there yet.

The Court: You have not been over there yet?

The Witness: No, sir.

The Court: Are you expecting to go there?

The Witness: No, sir. The New York Giants farmed me out to Minneapolis. [23]

The Court: I see.

Mr. McCall: That is all.

The Court: That is all.

(Witness excused.)

The Court: We will recess for 5 minutes.

(Brief recess.)

Mr. McCall: If your Honor please, I want to put Mr. Barisoff on for one more question.

WILLIAM BARISOFF

recalled as a witness, having been previously duly sworn, resumed the stand and testified further as follows:

Further Redirect Examination

By Mr. McCall:

Q. Mr. Barisoff, when did you first make a complaint to the Selective Service System about your discharge by the Hollywood Club?

A. About a month before the season closed in our league over there down in Seattle.

Q. In Seattle. So that the season closed September the 8th and you complained—

A. (Interposing) In August.

(Testimony of William Barisoff)

Q. In August. You turned the matter over to them to adjust for you? A. Yes, sir.

Q. To try to work out? [24] A. Yes, sir.

The Court: What year was that?

Q. By Mr. McCall: I say, did you turn the matter over to them to try to work out for you?

A. Yes, sir.

The Court: That was in 1946?

The Witness: Yes, sir.

Q. By Mr. McCall: And thereafter did you communicate with the Selective Service System from time to time about their contact with the baseball club?

A. Yes, sir. As soon as the league closed I phoned Seattle up and told them I was coming back home to Los Angeles; so they transferred it over to here to Ninth and Hill, I think.

Q. You have been in contact from then on with the Selective Service System or the United States Attorney's office about this matter? A. Yes, sir.

Q. At the time that you contacted the Selective Service System about this had you at that time been purchased by the Giants, the New York Giants?

A. No, sir. It was after the baseball season when they bought me.

Q. That was sometime in December, I believe you said, November or December? [25]

A. Well, no. They bought me about two weeks after the season was over.

Mr. McCall: That is all.

Mr. Kanne: No further questions.

(Witness excused.)

Mr. McCall: Mr. Lilly.

ARTHUR M. LILLY,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Arthur M. Lilly.

The Court: I did not catch your name.

The Witness: Arthur M. Lilly.

The Court: How do you spell it?

The Witness: L-i-l-l-y.

Direct Examination

By Mr. McCall:

Q. Mr. Lilly, what is your age, please?

A. Twenty-nine, sir.

Q. How long have you been playing professional baseball?

A. This is my eighth year.

Q. In other words, you started eight years ago?

A. Yes, sir. [26]

Q. With whom did you first play professional baseball?

A. I left college in '39 and went down to Beaumont, Texas, in the Texas League.

Q. How long did you stay with Beaumont?

A. I stayed there until 1940.

Q. In other words, you played two seasons with Beaumont?

A. Yes, sir.

Q. What class league was that?

A. A-1.

Q. Is that the same class league as the Pacific Coast League then was?

A. No, sir. The Pacific Coast then was AA.

Q. AA?

A. Yes, sir.

(Testimony of Arthur M. Lilly)

Q. After you played the years 1939-1940 with Beaumont, what position did you play? A. Second base.

Q. In 1941 did you play professional baseball?

A. Yes, sir. I played with Texarkana in the Cotton States.

Q. Is that Texarkana, Texas, or Texarkana, Arkansas? A. That is in between Texas and Arkansas.

Q. What positions did you play?

A. I played third, short and second. [27]

Q. In 1942 with whom did you play?

A. Well, after the '41 season the league broke up. The Cotton States was made a free agent, and I signed up with Hollywood in the spring.

Q. You signed with them the beginning of the season? A. '42.

Q. What position did you play with Hollywood during the 1942 season?

A. In the 1942 season I was playing during spring training—I played short some and second base, and then they optioned me out to Tacoma after the league started, the Coast League started.

Q. What class league is the Tacoma?

A. Class "B", Western International League.

Q. Did you spend the entire season with Tacoma?

A. Yes, sir.

Q. Under contract with Hollywood?

A. Yes, sir. I was on option.

Q. Now, in 1943 with whom did you play?

A. Hollywood.

Q. Did you sign a contract that year?

A. Yes, sir.

Q. What was your pay? A. \$300 a month.

(Testimony of Arthur M. Lilly)

Q. Did you play the entire season? [28]

A. I played until July when I was inducted in the service.

Q. Were you on the regular first string?

A. Yes, sir.

Q. When were you inducted into the service?

A. July 9, 1943.

Q. What branch of the service? A. Air corps.

Q. Now, did you play baseball while in the service?

A. Yes, sir.

Q. In other words, you kept in shape?

A. Yes, sir.

Q. With whom did you play in 1943?

A. I played with the Sixth Ferrying Group in 1943, and in 1944 at Long Beach, California.

Q. In 1945 did you play?

A. In 1945 a group of ball players went overseas as an entertainment unit, and I went overseas with them.

Q. What type players were on this team?

A. The majority of them were major league ball players.

Q. Major League ball players? You mean something that is even higher, as AAA?

A. That is as high as you can go, sir.

Q. In other words, there are 16 major league teams?

A. No. There is 8 major league ball clubs. [29]

Q. Eight major league ball clubs? A. Yes, sir.

Q. In other words, there is one—

A. (Interposing) National, American—16 is right.

Q. They are the only teams that are entitled to be called a major league team, is that right?

A. Yes, sir.

(Testimony of Arthur M. Lilly)

Q. Right under that is the AAA, is that right?

A. Yes, sir.

Q. All right. After making this trip with this group, which you say was composed of major league ball players in the service, were you discharged in '45?

A. I was discharged in '46.

Q. '46? A. January 9, 1946.

Q. Now, did you apply to the Hollywood Baseball Club for reemployment?

A. Yes, sir. I phoned Mr. Reichow and asked him what I had to do.

Q. Who is Mr. Reichow?

A. Mr. Reichow is the business manager of the Hollywood Baseball Club. I asked him—

Q. (Interposing) Mr. Fausett was the manager?

A. He was the manager, yes, sir.

Q. Mr. Fausett directed the play on the field and Mr. [30] Reichow looked after the money, is that right?

A. Yes. He is the business manager.

Q. All right. You contacted Mr. Reichow and what happened?

A. He told me to wire or write Bramham, Mr. Bramham—George Bramham. He is a minor league judge. And I wrote him, and I got a reply that I was reinstated to the Hollywood Baseball Club.

Q. Now, in connection with that I will ask you whether or not these players when they went into the service were put on military leave under the orders of the National Association of Professional Baseball Leagues of which Judge Bramham was the minor league czar.

A. Yes, sir.

(Testimony of Arthur M. Lilly)

Q. Ruler? A. Yes, sir.

Q. So you cleared and secured your reinstatement from Judge Bramham to the Hollywood Club, is that right? A. Yes, sir.

Q. I hand you a letter dated January 18, 1946, addressed to Arthur M. Lilly at Inglewood, California, signed by W. G. Bramham, President-Treasurer of the National Association of Professional Baseball Leagues, Office of the President, Durham, North Carolina.

Is that the letter that you received from Judge Bramham [31] notifying you of your reinstatement?

A. Yes, sir.

Mr. McCall: It reads as follows:

"Dear Sir:

"I have your letter stating that you have been discharged from the service. I am reinstating you to the active list of the Hollywood Club.

"Very truly yours,

"W. G. Bramham

"President-Treasurer."

Q. By Mr. McCall: Is that right?

A. Yes, sir.

Mr. McCall: I ask that that letter, if your Honor please, be made Petitioners' exhibit next in order.

The Clerk: Petitioners' Exhibit 4 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 4.)

[PLAINTIFFS' EXHIBIT NO. 4]

NATIONAL ASSOCIATION OF PROFESSIONAL
BASEBALL LEAGUESOffice of the President
Durham, N. C.

January 18th, 1946.

Arthur M. Lilly

609 Venice Way, Inglewood, Calif.

Dear Sir:

I have your letter stating you have been discharged from the service. I am reinstating you to the active list of the Hollywood Club.

Very truly yours,

W G Bramham

W. G. Bramham,

WGBd

President-Treasurer

Hollywood

Case No. 6321 O'C Civil Wm. Barisoff vs. Hollywood Baseball Assoc. Plf. Exhibit. Date 3/6/47. No. 4 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

No. 11706. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 12, 1947. Paul P. O'Brien, Clerk.

(Testimony of Arthur M. Lilly)

Q. By Mr. McCall: Now, as a result of that reinstatement I will ask you whether or not a contract was entered into for the 1946 season between the Hollywood Club and yourself. A. Yes, sir.

Q. I hand you two papers. First I hand you a paper which purports to be a contract between the Hollywood Baseball Club and yourself dated April 15, 1943, and ask you if that is a correct copy of the contract under which you played baseball for Hollywood in the season 1943.

A. Yes, sir.

Mr. McCall: I will ask that that be admitted in evidence as Petitioners' Exhibit No. 5.

The Court: It may be admitted.

The Clerk: Petitioners' Exhibit No. 5 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 5.)

Q. By Mr. McCall: Now, the salary in that contract for 1943 was \$300, was it not?

A. \$300 a month, yes, sir.

Q. I hand you another paper which is a contract between Hollywood Baseball Association and yourself, dated February 18, 1946, and ask you if that is the contract under which you played baseball for Hollywood in 1946.

A. Yes, sir.

Q. The salary there is \$450 a month.

A. Yes, sir.

Q. This was on a uniform player's contract, is that right? A. Yes, sir.

Mr. McCall: I will ask that that be admitted, your Honor, as Petitioners' Exhibit No. 6.

The Court: It may be admitted. [33]

(Testimony of Arthur M. Lilly)

The Clerk: Petitioners' Exhibit 6 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 6.)

Q. By Mr. McCall: Now, were you restored to the regular line-up of the Hollywood Club in 1946?

A. No, sir.

Q. Did you go to spring training with them?

A. Yes, sir.

Q. Any complaint ever made about the way you were playing baseball?

A. Not that I know of, unless it was made some other place.

Q. It wasn't made to you? A. No, sir.

Q. How long did you remain with the team?

A. I remained until May 26, 1946, when I was released.

Q. May 26th? A. Yes, sir.

Q. The season opened—

A. (Interposing) April 1st.

Q. April 1st. So that you were with them practically two months? A. Yes, sir.

Q. Now, under what circumstances were you released by the Hollywood Club? [34]

A. Well, I went in one Sunday before the game, before I got dressed, and I went in and asked Mr. Reichow what was going to happen, whether they were going to send me out before the season started. He took me up in the stands one day and talked to me and wanted to send me to Birmingham.

(Testimony of Arthur M. Lilly)

Q. Let us get about what date that was again.

A. That was in—I am not positive—but it was in April, the first part of April.

Q. The first part of April? A. Yes, sir.

Q. Right immediately after the play started for the year? A. Yes, sir.

Q. And Mr. Reichow was talking to you. Now, what did he say to you?

A. He said would I like to go to Birmingham. Well, I wasn't too tickled about the idea at the time because I figured—I figured I wouldn't have chance enough to make the ball club.

Q. What did you say?

A. I said that I didn't have an ample chance to make the ball club.

Q. You were not convinced that you didn't have any?

A. Yes, sir.

Q. All right. [35]

A. And finally I told him that I would have to 'tend to some business; I wanted to sell my car and stuff before I went up there, and I think the season started around April 13th or April 12th, around there; and I was supposed to leave right away if I went. So nothing was said. I went home and tried to sell my car, and everything like that; and after I came back again, after the first series we played, I was called in to see him and he said that they were going to keep me on the ball club; so they weren't going to send me out. So it was all right with me.

Q. He was referring to Birmingham, Alabama, in the Southern League?

A. In the Southern League, yes, sir.

(Testimony of Arthur M. Lilly)

Q. All right. Did you participate in a series of games at San Diego? A. Yes, sir.

Q. What position did you play down there?

A. Second base.

Q. Was the team successful? A. Yes, sir.

Q. Did you play a good game of baseball or not?

A. Fair.

Q. All right. Now, what occurred then from that time on until you were released?

A. Well, from that time on I was just in and out, once [36] in a while pinch-hit, and went in and relieved a couple of times in Portland. Then we went up north, and Woody Williams got hurt. His ankle was broken; so I was put in second base at the time.

Q. I see.

A. Then we came down south, and I played several games against Oakland, and Seattle came to town.

Q. Who was that? A. Seattle.

Q. Seattle came to Hollywood? A. Yes, sir.

Q. All right.

A. And then we went up north again to Oakland, and I didn't play any more after that. That is all.

Q. Did they bring in a new player while you were at Oakland?

A. Yes, sir. He was supposed to sign on, but he didn't report until we went up to Oakland.

Q. I see. And he played—

A. (Interposing) Yes, sir. He played second base.

Q. Now, were you playing any differently, any worse, in 1946 than you were in 1943?

A. No. I thought I was playing better.

(Testimony of Arthur M. Lilly)

Q. I see. On the occasion, now, when this new man reported at Oakland, about how long was it then until you had [37] the conversation with Mr. Reichow in which you were released?

A. Oh, that has been approximately a month, a little over a month, a month and a half, a month and a week, something like that.

Q. Had you been playing regularly?

A. I had been in and out.

Q. Sort of a utility man? A. Yes, sir.

Q. All right. Then you had a conversation with Mr. Reichow? A. Yes, sir.

Q. You went to see him about the matter?

A. Well, one Sunday we came home, and Sunday I thought I would go in and find out what was going to happen, whether they were going to option me out or what they were going to do. So I went in and talked to him and had a little talk, and he finally told me he was going to give me my release. But I wasn't too satisfied about it, but I didn't say too much.

Q. Is this the release he gave you (indicating)?

A. Yes, sir.

Q. This paper dated May 26, 1946, signed "Oscar Reichow, Hollywood Baseball Club," addressed to you:

"You are hereby officially notified of the following disposition of your contract: [38]

"1. You are released outright and unconditionally."

Is that the notice he gave you? A. Yes, sir.

Q. That you received? A. Yes.

(Testimony of Arthur M. Lilly)

Mr. McCall: I will ask that that be made Petitioners' Exhibit No. 7.

The Clerk: Petitioners' Exhibit No. 7 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 7.)

[PLAINTIFFS' EXHIBIT NO. 7]

CLASS AAA

THE NATIONAL ASSOCIATION OF
PROFESSIONAL BASEBALL LEAGUES

Official Notice of Disposition of Player's Contract
and Services

To Player Arthur M. Lilly. You are hereby officially notified of the following disposition of your contract:
Cross Out Conditions Not Applicable

1. You are released outright and unconditionally.

* * * * *

Secretary

Oscar Reichow ~~President~~

Hollywood Baseball Club

Dated May 26, 1946.

Mail one notice each to (1) President National Association; (2) President of League; (3) Hand one to player, or, if not possible, mail to him by registered mail at time of assignment return or cancellation of right of recall of his contract or his outright release therefrom.

(Over)

(Plaintiffs' Exhibit No. 7)

.....19.....

Receipt of copy of this official notice is acknowledged.

.....

Player

Witness:

.....

Note:—Receipt not required but is suggested only as added protection to club in case of personal delivery—not when mailed player which should be by registered mail. In the latter case mail original to player, copies to League President and President of National Association on date of issuance.

Case No. 6321 O'C. Barisoff vs. Hollywood Baseball. Plf. Exhibit. Date 3/6/47. No. 7 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif., Deputy Clerk.

No. 11706. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 12, 1947. Paul P. O'Brien, Clerk.

Q. By Mr. McCall: By the way, I meant to ask you, you were honorably discharged from the Army?

A. Yes, sir, from the Army.

Q. After your release on May 26th did you secure employment as a baseball player elsewhere?

A. Yes, sir.

(Testimony of Arthur M. Lilly)

Q. When was it?

A. I signed a contract June 7, 1946, with the Yakima Ball Club.

Q. What rate of pay were you to receive there?

A. \$200 per month.

Q. And your contract with Hollywood under which you had opened the season was \$450, was it not?

A. \$450, yes sir. [39]

Q. I hand you a contract between the Yakima Baseball Club, Inc., and yourself, dated June 7, 1946, and ask you if that is the contract under which you played baseball for Yakima.

A. Yes, sir.

Q. That is the date on which you entered into it?

A. Yes, sir.

Mr. McCall: I ask, if your Honor please, that it be made next exhibit in order.

The Clerk: Petitioners' Exhibit No. 8 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 8.)

Q. By Mr. McCall: Now, did you finish the season with Yakima?

A. Yes, sir.

Q. Have they offered you a contract to play for 1947?

A. Yes, sir.

Q. At what figure?

A. \$240 a month.

Q. How much?

A. \$240 a month.

Q. Did you receive any bonus for signing the contract?

A. Yes, sir.

Q. That has been made Exhibit 8?

A. Yes, sir. [40]

(Testimony of Arthur M. Lilly)

Q. How much?

A. \$500. \$350 was to be paid the first installment, \$150 by September 1st.

Q. That contract requires you to play for them during the 1947 season, too?

A. Well, I am under contract to them, yes, sir.

Q. And any dispute about the amount you were to get, then, that is to be referred, under the baseball regulations, to an umpire?

A. That is between you and the club owner.

Q. I mean if you cannot agree.

A. Yes, sir. That is between the player and the club owners if you can't agree on a salary.

Q. All right. I believe you requested in this petition that Hollywood reinstate you to its employ for the balance of your employment year?

A. That is the way I applied for it, yes, sir.

Q. When did you first complain or contact the Selective Service System about your discharge by Hollywood Baseball Club?

A. June of 1946.

Q. Let's see. You were discharged on May 26th?

A. Yes, sir.

Q. What particular branch of the Selective Service System did you contact? [41]

A. I contacted the draft board, sir, in Yakima.

Q. In Yakima? A. Yes, sir.

Q. Did you contact them from time to time after you were negotiating with the Hollywood Club?

A. Yes. I contacted them from time to time. They switched my case from Washington to California.

Q. And they referred it to the United States Attorney's office, is that right? A. Yes, sir.

(Testimony of Arthur M. Lilly)

Q. Now, when did the season end for the Yakima Club? A. September 8, 1946.

Q. The Hollywood Club continued to play until September 22nd, is that right?

A. Around that period of time. I don't know just exactly the dates.

Q. Under this contract you get paid for each day during which the club continues to play baseball, is that right? A. Yes, sir.

Q. And you would have continued to play for Hollywood, if you had been under that contract, from September 8th to about September 22nd? A. Yes, sir.

Mr. McCall: That is all. [42]

Cross Examination

By Mr. Kanne:

Q. During the year 1946 you testified that you were with the Hollywood Ball Club in spring training up to May 26th, is that correct?

A. May 26th is during the season.

Q. You were with them from the commencement of the season up to May 26th? A. Yes, sir.

Q. And at what rate of pay were you paid?

A. \$450 a month.

Q. What was the total that you received from the Hollywood Ball Club for the period you were with them?

A. Closely around \$880-some dollars.

Q. \$880? A. Yes, sir.

Q. Was that your take-home pay or your salary pay for the time? A. That was without—

Q. That was without deductions? A. Let's see.

(Testimony of Arthur M. Lilly)

The Court: Do you want a little time to check that up? I will give it to you.

The Witness: No, that's all right. Approximately \$885.

Q. By Mr. Kanne: Were you given pay beyond May 26th [43] when you were given your notice of release?
A. No, sir.

Q. You were not given any termination pay?

A. No, sir, just up to May 26th.

Q. You testified that you received a \$500 bonus from the Yakima Club?
A. Yes, sir.

Q. When did you receive the \$350?

A. I received \$350 about, oh, about a week after I signed my contract.

Q. Was that in June of 1946?
A. Yes, sir.

Q. Did you receive the \$150 on September 1st of 1946?
A. I received that around August.

Q. Did you receive any other bonuses from the Yakima Ball Club for any purpose whatsoever?

A. The only thing we received, we had an exhibition game after the season; and we got \$60 out of it.

Q. You got \$60 for an exhibition game?

A. Yes, sir.

Q. Do you know how much you received altogether from the Yakima Club in salary, including the exhibition game and the monthly salary that you received from the time which you signed on on June 7th until the end of the season?
A. Yes, sir. [44]

(Testimony of Arthur M. Lilly)

Q. And excluding the amounts that you have testified to as bonus?

A. I received \$200 a month for three months: \$600. That is without tax, without the tax taken out, and plus my bonus, \$500 bonus.

Q. Plus what? A. My bonus.

Q. And plus the \$60? A. That is \$1100.

Q. \$1160. A. \$1160, that's right.

Q. After completing the season with Yakima have you played baseball anywhere else up to the present time?

A. Yes, sir.

Q. Where have you played?

A. I played this winter down in Mexico for Hermoillo.

Q. Is that any organized league?

A. No, sir. They called it the League Pacific. It is more or less semi-pro down there.

Q. What rate were you paid at down there?

A. \$450 a month.

Q. You were paid at the rate of \$450 a month?

A. Yes, sir, and—

Q. (Interposing) When did you start to play there?

A. The 16th of October. [45]

Q. When did your employment terminate?

A. The 18th of February.

Q. Did you receive the \$450 a month for all the intervening months?

A. Just for the months I was down there.

Q. For four months? A. Four months.

(Testimony of Arthur M. Lilly)

Q. You received approximately \$1800?

A. Yes, sir.

Q. Was \$1800 the precise figure?

A. \$1800 is precisely what it was, yes.

Q. Have you received any other compensation from any other organization for playing baseball since the commencement of the 1946 season and up to date?

A. No, sir. That is all.

Q. You testified that during the time that you were in spring training prior to the 1946 season no complaint was made about your play.

Did your play come to the particular attention of either the manager, Mr. Fausett, or the coach, Mr. Thurston, for particular instruction at any time?

A. Yes, sir. Mr. Thurston tried to cure a certain bat—certain batting habits that I had. That is about all the instruction that I remember getting.

Q. Did he work with you on that on different occasions? [46]

A. Yes, sir.

Q. Did he continue to work and coach you during the period after the commencement of the season and as long as you were with the Hollywood Club?

A. Yes, sir.

Mr. Kanne: No further questions.

Mr. McCall: That is all.

The Court: That is all.

(Witness excused.)

Mr. McCall: Mr. Knudson.

ROBERT I. KNUDSON,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Robert I. Knudson.

The Court: I did not catch the last name. What is your name?

The Witness: Robert I. Knudson.

The Court: How do you spell it?

The Witness: K-n-u-d-s-o-n.

Direct Examination

By Mr. McCall:

Q. Mr. Knudson, what is your age?

A. Twenty-one. [47]

Q. When did you first play professional baseball?

A. 1943.

Q. Speak out loud so I can hear you and the judge can, too.

A. 1943.

Q. Did you sign up with Hollywood?

A. Yes, sir.

Q. At that you played baseball?

A. Yes, sir.

Q. How long were you with the club?

A. From the middle of June for the remainder of the season.

Q. You finished the season with them?

A. Yes.

Q. How much were you being paid?

A. \$200 a month.

Q. Now, let's see. You had been playing baseball that year on a high school team, had you?

A. Yes, sir, previously.

(Testimony of Robert I. Knudson)

Q. Previous to that. At the close of school you went with the Hollywood Club?

A. Yes, sir, that's right.

Q. How many games did you play in?

A. At Hollywood?

Q. Yes. [48]

A. I took part in approximately six or seven.

Q. As a pitcher? A. Yes, sir.

Q. Now, after the close of the season did you enter the Army?

A. Well, within four or five months after the season, yes.

Q. When did you enter the Army service?

A. February.

Q. What? A. February, '44.

Q. February of '44. At that time were you under contract to Hollywood? A. Yes, sir.

Q. How long did you remain in the Army?

A. Twenty-seven months.

Q. You were discharged when?

A. May 5, 1946.

Q. Did you have any opportunities to play baseball in the Army? A. None whatsoever.

Q. What branch of the service were you in?

A. Air corps.

Q. You were not in practice during those years?

A. That's right. [49]

Q. I believe you say you were Army discharged on what date? A. May 5th.

Q. 1946? A. Yes.

Q. That was after the start of the playing season?

A. That's right.

(Testimony of Robert I. Knudson)

Q. In other words, you were a rookey pitcher and you went to war and came back? That is about the sum and substance of it? A. Yes, sir.

Q. Now, when you came back what did you do about reemployment?

A. I went and saw Mr. Reichow about three weeks after I was discharged.

Q. Did they give you a contract for the rest of the season?

A. Well, they put me under contract and optioned me to Fresno.

Q. I see. I hand you a contract between Hollywood Baseball Association and yourself, dated June 25, 1943. I ask you if that is the contract under which you played during the season '43 and to the end of the season.

A. That's right.

Q. That is the contract, is it? [50] A. Yes.

Q. And that provided for \$200 per month?

A. Yes.

Q. As your salary. Now, I hand you another paper which purports to be a contract between the Hollywood Baseball Association and yourself, dated May 29, 1946.

Is that the contract into which you entered with the Hollywood Club upon your return from service?

A. Yes, sir.

Q. This new contract called for \$250 per month salary, is that right? A. Yes, sir.

Mr. McCall: I will ask, if your Honor please, that the first contract be made Petitioners' Exhibit No. 10 and the second—

(Testimony of Robert I. Knudson)

The Clerk: Wait a minute. No. 9.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 9.)

Mr. McCall: And the second, Petitioners' 10.

The Clerk: Admitted, your Honor?

The Court: Yes. When they offer these exhibits, when there is no objection, show they are admitted.

The Clerk: Yes, your Honor. Those will be 9 and 10, respectively. [51]

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 10.)

Q. By Mr. McCall: Now, after you rejoined the club in May of 1946, how long did you remain with it?

A. I wasn't with them at all. I went directly to Fresno.

Q. You went directly to Fresno. I hand you another contract which is a contract between the Fresno Cardinals, Inc., and Robert I. Knudson, dated June 6, 1946, for \$150 a month.

Is that the contract that you entered into with Fresno?

A. Yes, sir, it is.

Mr. McCall: I will ask that that be made Petitioners' 11.

The Clerk: Petitioners' Exhibit No. 11 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 11.)

Q. By Mr. McCall: Now, the Fresno contract called for \$150 a month, and the Hollywood contract called for \$250 a month.

(Testimony of Robert I. Knudson)

How did you get paid under those contracts?

A. Fresno paid \$150 and Hollywood make up the difference: \$100.

Q. Did Hollywood pay you direct by check?

A. Yes, sir. [52]

Q. \$100 each month and Fresno the \$150?

A. That's right.

Q. That is what is called "optioning a player"?

A. That's right.

Q. All right. You were optioned to Fresno, and how long did you remain with them?

A. Approximately two months.

Q. Were you released by Fresno? A. Yes, sir.

Q. Now, on what date were you released?

A. July 29th, I believe.

Q. I will ask you if at the same time you received a telegram from Mr. Oscar Reichow advising you of your release by the Hollywood Club. A. Yes, sir.

Q. I ask you if this is the telegram to which you refer (indicating). A. That is it.

Mr. McCall: I will ask, your Honor, that this be made Petitioners' Exhibit 12 and ask leave to read the telegram:

"ROBERT KNUDSON

"FRESNO BASEBALL CLUB, FRESNO

"FRESNO HAS RETURNED YOUR CONTRACT TO US AND AS WE ARE FILLED UP WE ARE HEREWITH RELEASING YOU UNCONDITIONALLY AS OF THIS DATE.

"OSCAR REICHOW" [53]

(Testimony of Robert I. Knudson)

The Clerk: Petitioners' Exhibit 12 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 12.)

[PLAINTIFFS' EXHIBIT NO. 12]
WESTERN UNION

* * * * *

1946 JUL 29 AM 10 15

SA25 23=LOSANGELES CALIF 29 1002A
ROBERT KNUDSON=

FRESNO BASEBALL CLUB FSNO=
FRESNO HAS RETURNED YOUR CONTRACT
TO US AND AS WE ARE FILLED UP WE ARE
HERWITH RELEASING YOU UNCONDITION-
ALLY AS OF THIS DATE=

OSCAR REICHOW.

Case No. 6321 O'C. Wm. Barisoff vs. Hollywood
Baseball. Plf. Exhibit. Date 3/6/47. No. 12 in Evi-
dence. Clerk, U. S. District Court, Sou. Dist. of Calif.
Cross, Deputy Clerk.

No. 11706. United States Circuit Court of Appeals for
the Ninth Circuit. Filed Aug. 12, 1947. Paul P. O'Brien,
Clerk.

Q. By Mr. McCall: That telegram is dated July
29th.

Now, after that what did you do?

A. I went directly home, and I was home for about
two weeks.

(Testimony of Robert I. Knudson)

Q. Then what happened?

A. Then Fresno notified me if I wanted to, I could come back and finish the season with them and they would give me my release at the end of the season.

Q. Did you go back and finish the season with them?

A. Yes.

Q. I hand you another paper, which is a contract between the Fresno Cardinals and yourself, dated August 15, 1946, calling for a salary of \$200 a month.

Is that a new contract that you entered into upon your recall by Fresno? A. Yes, that is correct.

Mr. McCall: I will ask that that be made Petitioners' 13, if your Honor please.

The Clerk: Petitioners' Exhibit 13 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 13.)

Q. By Mr. McCall: No, how long did the season last [54] in Fresno? A. Until September 2nd.

Q. September 2nd. Did you receive any further payments from the Hollywood after your release by them July 29th? A. No. No, sir.

Q. Were you unemployed for two weeks and then back at \$200 with Fresno? A. That is correct.

Q. After the end of the Fresno playing season, on September 2nd, and then from approximately September 22nd, were you employed anywhere?

A. No. I enrolled in school on the 17th of September.

(Testimony of Robert I. Knudson)

Q. The 17th of September. And then you remained in school until when?

A. Until, I think it was, the 1st of January, the latter part of December.

Q. Now, Mr. Knudson, is it necessary to have training in order to pitch baseball well? A. Yes.

Q. You had been given no training when you came back the latter part of May? A. No, sir.

Q. About how many games did you participate in? Did you play in any games for Hollywood?

A. None. [55]

Q. About how many games did you participate in at Fresno?

A. Until my release, approximately seven.

Q. About seven? A. Yes.

Q. How many of those games were won?

A. I won one.

Q. Then after you returned—you didn't pitch a full game in any of those?

A. I believe I pitched one. I had won one and lost four before I was released.

Q. You pitched a full game? A. One.

Q. One game. Is that the one you won or not?

A. That is the one I won, yes.

Q. I see. After you returned there how many games did you participate in?

A. Approximately three or—three, I believe it was.

Q. Three. How did they turn out?

A. I won one and lost one.

Q. Have you been practicing since the close of the season? A. Yes, I have.

(Testimony of Robert I. Knudson)

Q. You are in good playing condition now?

A. Well, I am in fair playing condition, yes. [56]

Q. You are in better playing condition as a pitcher than you were last summer?

A. Yes, sir.

Mr. McCall: I believe that is all.

Q. By Mr. McCall: Oh! When did you first take this matter up with the Selective Service System?

A. After my release, about two weeks.

Q. About two weeks after your release?

A. Yes, sir.

Q. And they have been handling it for you; our office has been handling it for you ever since that time?

A. That's right.

The Court: Any cross examination?

Mr. Kanne: Yes, your Honor.

The Court: We have been waiting for you.

Cross Examination

By Mr. Kanne:

Q. After your discharge from the service on or about May 5, 1946, when did you make application to the Hollywood Baseball Association for reemployment?

A. I believe it was May 29—May 28th.

Mr. McCall: The contract is dated May 26th.

Q. By Mr. Kanne: Where is your home town?

A. Los Angeles.

Q. What high school did you play baseball with before [57] you contracted to Hollywood?

A. Fairfax High School.

Q. Was the Hollywood contract your first professional contract?

A. Yes, sir.

(Testimony of Robert I. Knudson)

Q. You testified that you played in a few games in 1943 for Hollywood? A. That's right.

Q. Did you pitch? A. Yes, sir.

Q. Did you start any games? A. No.

Q. Did you finish any games? A. Yes.

Q. How many innings did you pitch in some of the games that you played?

A. Oh, it run two or three innings.

Q. Do you recall whether or not any of those games were won by Hollywood?

A. No, I don't believe any of them were won.

Q. In 1946, after you were reemployed by the Hollywood Baseball Club, were you retained with the team at their home field when they were playing there?

A. No, I wasn't.

Q. Were you there for any length of time whatsoever [58] after you signed the contract?

A. None whatsoever.

Q. You went directly to Fresno?

A. That's right.

Q. How much did you receive altogether from the Hollywood Baseball Club during 1946, direct from the Hollywood Baseball Club?

A. I don't know exactly. It was a little over \$200, I believe.

Q. Was it at the rate of \$100 per month from May 26th until the time you were first released by Fresno in July, July 29th? A. That's right.

Q. At the rate of \$100 per month from May 26th to July 29th? A. That's right.

Q. Just a little over \$200, in other words?

A. That's right.

(Testimony of Robert I. Knudson)

Q. How much did you receive from the Fresno Ball Club during 1946?

A. Approximately \$300. I don't know the exact figures.

Q. Well, you were paid at the rate of \$150 a month by Fresno for two months on which Hollywood was also paying, is that correct?

A. That's right. [59]

Q. And that was \$300 you received from Fresno?

A. Yes.

Q. Then when you were rehired by Fresno, how much did you receive under your rehiring?

A. It was on the basis of \$200 a month. I don't believe there was a full month left.

Q. Do you recall what your last pay check was for the last period?

A. Roughly \$170, I would say roughly.

Q. That was \$200, less your deductions for withholding?

A. This was with deductions included.

Q. Did you receive any other baseball earnings during 1946 or up to the present time?

A. None whatsoever.

Mr. Kanne: That is all, your Honor.

The Court: We will recess until 1:45.

(Whereupon, at 11:55 o'clock a. m., a recess was taken until 1:45 o'clock p. m. of the same date.) [60]

Los Angeles, California, March 6, 1947, 2:00 o'clock
P. M.

The Court: Proceed.

Mr. McCall: Mr. Dawson, will you take the stand,
please?

HUBERT L. DAWSON,

called as a witness by and on behalf of the government,
having been first duly sworn, was examined and testi-
fied as follows:

The Clerk: Your full name?

The Witness: Hubert L. Dawson.

The Clerk: Is that D-a-w-s-o-n?

The Witness: Yes, sir.

The Clerk: Take the stand, please.

Direct Examination

By Mr. McCall:

Q. Mr. Dawson, what is your age, please, sir?

A. Twenty-six.

Q. How long have you been playing professional base-
ball?

A. This is my second—two and a half full years.

Q. Two and a half years of baseball?

A. Yes, sir.

Q. When did you first play it? A. 1942. [61]

Q. That has been your business, the way you have
been making your living since that time?

A. Besides being in the service, yes, sir.

(Testimony of Hubert L. Dawson)

Q. All right. With whom did you sign? What team did you sign with for the year 1942?

A. I was with Olean, New York, and Santa Barbara, California.

Q. What position did you play?

A. Third base.

Q. Did you play shortstop, too, at any time?

A. Not in 1942.

Q. Not in 1942? A. No, sir.

Q. In what class leagues were those teams?

A. Class "C" and "D."

Q. In 1943 did you sign with the Hollywood Club?

A. Yes, sir.

Q. At the beginning of the season?

A. Yes, sir, during spring training.

Q. And you sent through spring training?

A. Yes, sir.

Q. Did you thereafter play with the team?

A. I was carried on the roster, merely used in pinch-hitting roles about five times.

Q. And subsequently were you optioned to any other [62] team? A. Yes, sir.

Q. What team?

A. Memphis and the Southern Association.

Q. The Southern Association is in what class?

A. A-1.

Q. A-1? A. Yes, sir.

Q. That is the grade next below Hollywood?

A. At that time, yes, sir.

Q. Did you complete the season at Memphis?

A. No. I was called into the service July 1, 1943.

(Testimony of Hubert L. Dawson)

Q. How long did you stay in?

A. Until June 24th.

Q. What branch of the service were you in?

A. Marine corps.

Q. Now, did you play baseball any of the balance of the 1943 season or the season of '44?

A. No, sir.

Q. Or '45? A. No, sir.

Q. In other words, you were in the business of fighting the war? A. Yes, sir.

Q. When were you discharged? [63]

A. I was separated from the service on April 6, 1946, but my terminal leave didn't end until April 20, 1946.

Q. So that you actually were formally released on April 20th? A. Yes, sir.

Q. Were you released to inactive duty?

A. Yes.

Q. You are still a member of the Marine Reserve, though, are you? A. Yes, sir.

Q. When did your terminal leave begin?

A. April 6th.

Q. Did you report to the Hollywood Club for spring training?

A. I had just returned from overseas on February 4th, and I hadn't been separated from the service, but I reported for spring training upon my own. In other words, I wanted to play and try to get in shape before I was separated from the service.

Q. So you had played with them in spring training during your terminal leave? A. No, sir.

(Testimony of Hubert L. Dawson)

Q. No?

A. It was during my own time. In other words, when my C. O. saw fit that I could be released, I had a few days at [64] camp; then there would be several days I had to stay at the camp.

Q. I see. In other words, spring training was in March, wasn't it?

A. Spring training was in progress, but I hadn't signed for anything that way.

Q. When did you sign with Hollywood?

A. It was April 6th or 7th, '46.

Q. Do you have a copy of the contract?

A. I don't have any copy, no, sir.

Mr. McCall: Do you have it, counsel?

Mr. Kanne: Yes.

Q. By Mr. McCall: I hand you a contract between Hollywood Baseball Association and yourself, dated April 15, 1943, and ask you if that is the contract under which you played baseball in the year 1943.

A. Yes, sir.

Q. And your salary at that time was \$300 a month, is that right? A. Yes, sir.

Q. Now, how much did Memphis pay you when you went there? A. The same price.

Q. The same price? A. Yes, sir. [65]

Mr. McCall: I ask, your Honor, that this contract be made Petitioners' exhibit next in order.

The Clerk: That will be Petitioners' Exhibit No. 14 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 14.)

(Testimony of Hubert L. Dawson)

Q. By Mr. McCall: Now, I show you another paper which purports to be a contract between the Hollywood Baseball Association and yourself for the 1946 season at \$375 per month, dated April 1, 1946.

I will ask you if that is the contract under which you agreed to play baseball for Hollywood during 1946.

A. On this April 1st, I don't know whether it was the 1st of April or not. I can't swear to that because I was not separated from the service, and I didn't ask for reinstatement until April 6th. But that is—(pause).

Q. That is the contract? A. Yes, sir.

Q. That was signed? A. Yes.

Mr. McCall: All right. I ask that that be made Petitioners' Exhibit 15.

The Clerk: Petitioners' Exhibit 15 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 15.) [67]

Q. By Mr. McCall: Now, after that contract was signed did you have a conversation with Mr. Reichow about whether you were going to stay with the team at the time you signed the contract or about that time?

A. Before I was even out of the service they told me I was going to be released; in other words, I wasn't in the plans for the team. I hadn't even signed my contract.

Q. Who told you that?

A. Mr. Reichow and Mr. Fausett.

Q. After you were out of the service you did sign the contract?

A. I signed that contract, yes, sir.

(Testimony of Hubert L. Dawson)

Q. When were you released?

A. April 14, 1946.

Q. Thereafter did you secure employment with some other team? A. Yes, sir.

Q. What team?

A. Yakima, Western International League.

Q. Is that the same team that Mr. Lilly was with?

A. Yes, sir.

Q. What contract did you have with them, what price?

A. I had a contract for \$200 a month plus a bonus of \$450 upon signing.

Q. Do you have a copy of that contract? [67]

A. Yes, sir.

Q. You have handed me a contract between the Yakima Baseball Club and yourself, dated April 24, 1946, is that correct? Is that the contract you speak of?

A. Yes, sir.

Q. This is your copy? A. Yes.

Mr. McCall: I will ask that this be made Petitioners' exhibit next in order.

The Clerk: That will be 15 in evidence.

Mr. McCall: 16.

The Clerk: 16 in evidence.

(The document referred to was received in evidence and marked Petitioners' Exhibit No. 16.)

Q. By Mr. McCall: Now, when did the Yakima season start? A. April 26th.

Q. Did you play the rest of the season with them?

A. Yes, sir.

(Testimony of Hubert L. Dawson)

Q. What position did you play with them?

A. Shortstop, second base.

Q. How many games did you play altogether?

A. 143.

Q. What was your batting average?

A. .262. [68]

Q. How many runs did you score? A. 130.

Q. 130? A. Yes, sir.

Q. How is that standing? Is that a good scoring average? A. I was second in the league, is all.

Q. Second in the league?

A. Yes, sir.

Q. By "the league" you mean eight teams?

A. Yes, sir.

Q. Are you under contract to play for Yakima next year? A. Yes, sir.

Q. That is a part of the contract that you made with them on this uniform players' contract, is that right?

A. Yes, sir. That is a binding contract for the next year.

Q. When does the spring training start at Yakima?

A. The 27th of March.

Q. Have they offered you a contract for next year?

A. Yes, sir.

Q. At what price? A. \$300.

Q. I believe you indicated that you would like to be reinstated on the Hollywood team? [69]

A. Yes, sir.

Q. When did the Yakima season stop?

A. September 8, 1946.

(Testimony of Hubert L. Dawson)

Q. Other than playing ball, did you have any earnings of any kind between September 8th and September 22nd?

A. One exhibition game which was after the season had finished that we had gotten up ourselves: \$60.

Q. Was that a Yakima team show or play exhibition game?

A. Yes, sir. But we put it on, and our president sanctioned it, okayed it; and we played the Valley All Stars for our transportation money home.

Q. I see. Now, is that all the money that you received of any type playing baseball in 1946?

A. Yes, sir.

Q. You didn't have any earnings from any other source? A. No, sir.

Mr. McCall: That is all.

Cross Examination

By Mr. Kanne:

Q. You testified that you signed that contract either on April 1st or April 6th or in that—

A. It was in that period of time.

Q. —period of time. When did you actually start on the Hollywood payroll in 1946?

A. 1946? The date of the contract. I don't have any [70] contract; so it is in that period. It was dated there April 1st.

Q. How long did you stay on the Hollywood payroll?

A. They gave me two weeks' pay, but I didn't stay there that time.

Q. How much did you get from Hollywood?

A. \$187.50.

(Testimony of Hubert L. Dawson)

Q. During the period that you were with Yakima from April 24th to September 28th, you were paid during that entire time at the rate of \$200 a month?

A. Yes, sir. September 8th that was, not 28th.

Q. September 8th? A. Yes, sir.

Q. Do you know what the total amount was that you did receive from Yakima?

A. Yes. \$1396, including the exhibition.

Q. How much?

A. \$1396, including the exhibition game: \$60.

Q. That is \$1396? A. Yes, sir.

Q. Did it include the bonus, too?

A. Yes, sir.

Q. Did you play for anyone else at any time since you went back with Hollywood in 1946, other than Yakima?

A. No, sir. [71]

Mr. Kanne: That is all.

The Court: That is all.

(Witness excused.)

Mr. McCall: I believe that completes the petitioners' case, your Honor.

The Court: I cannot hear you. Speak a little louder.

Mr. McCall: That is the petitioners' case, your Honor.

The Court: All right.

Mr. McCall: If your Honor will permit me, I would like to move to make some amendments on page 5 of the petition by interlineation.

The Court: What are they?

Mr. McCall: It is paragraph V, line 8, "Position Played" under the name "William Barisoff." I would like to insert "outfielder" after the word "pitcher," making it "pitcher-outfielder."

Mr. Kanne: What page?

Mr. McCall: Page 5 of the petition.

Mr. Cannon: That is the player.

Mr. Kanne: Page 3.

Mr. McCall: And on page 3, line 24, if your Honor please, "Loss of Wages to Date," under the name "Robert I. Knudson" I ask leave to amend the figure "\$550" to "\$308.21."

And in the same line under the name "Hubert L. Dawson, Jr.," to strike the figure "\$763" and insert "\$1185." [72]

Now, if your Honor please, in the petitioners' trial memorandum, which was presented this morning, there are a number of changes that need to be made in some of the figures there. I would like to amend it.

On page 2, line 19, the figure is given as "\$185 per month" as Barisoff's wage at the Bremerton Club. That should be changed to "\$175" instead of "\$185."

The Court: Petitioners rest?

Mr. McCall: Yes, sir.

Mr. Kanne: Pardon, sir?

The Court: You may proceed. The petitioners rest.

Mr. Kanne: Mr. Reichow, please.

OSCAR REICHOW

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Oscar Reichow, R-e-i-c-h-o-w.

The Clerk: Take the stand, please.

Direct Examination

By Mr. Kanne:

Q. Are you employed by the Hollywood Baseball Association? A. I am.

Q. In what capacity? [73]

A. As business manager and secretary.

Q. How long have you held that position with the ball club? A. Eight years.

Q. Did that include all the periods of time which have been referred to in this trial so far?

A. It does.

Q. Will you please describe briefly what other positions you have held in the field of baseball?

A. Well, before coming to Los Angeles I was a newspaper man at Chicago as a baseball writer for 14 years, and I was in the position of vice president and secretary-business manager of the Los Angeles Ball Club for 16 years before joining the Hollywood Club.

Q. In the position that you now hold with the Hollywood Baseball Association describe briefly what your duties are in connection particularly with the hiring and releasing of baseball players.

A. Well, I have the position of signing baseball players after they are recommended to the office by our

(Testimony of Oscar Reichow)

scouts and by our manager, and then when the manager decides that a ball player doesn't qualify for a position on the ball club, he refers it to me and I have the duty of releasing the ball player through the method of organized baseball play giving him an unconditional release and optioning out to some other [74] ball club for the balance of the year.

Q. In making those decisions to hire or to release a ball player, do you use your own independent judgment as well as collaboration, that is, with the recommendation of the managers or coaches of your club?

A. No. I generally rely on the coaches and the managers, on their judgment as to whether a ball player qualifies for a position or not.

Q. Do you have a baseball player limit on the Hollywood Ball Club?

A. Yes. We have a league limit of 25 men. We have a limit of 37 men up to within 30 days after our season opens up, after which time we must reduce to 25 men for the year.

Q. Does that mean that you may maintain only 25 men on your active Hollywood roster present with the Hollywood Star Baseball Team? A. That's right.

Q. Is it the normal practice of the Hollywood Baseball Team, as well as of other baseball teams in the professional leagues to hire more players during the course of a year than they are allowed to maintain on their own roster within that player limit?

A. Up to 30 days after our season opens we are allowed to carry 37 men. As a consequence, we do take on a lot of more players than we need on our ball club. [75]

(Testimony of Oscar Reichow)

Q. What is the general purpose of hiring those additional players?

A. Well, the idea is for development of young ball players, to give them an opportunity to play professional baseball; and if they don't make our ball club, to send them out for additional experience to the various classifications, lower classifications than our own.

Q. Are many of these players, in other words, untested at the time and unproven at the time that you enter into contracts with them?

A. Yes, many of them are. Boys that we pick off of college teams, high school teams, semi-pro lots, they are untested.

Q. In entering into contracts with them do you rely upon the fact that the contracts are terminable at the will of the baseball club?

A. That's right. That is part of the baseball law.

Q. What is the general procedure that you adopt with these men who are inexperienced and untrained, that is, where do you keep them or what do you generally do with them after you have entered into a contract with them?

A. Well, the first thing we do is take them into spring training camp, give them at least 30 days' trial to prove to the manager and the coach that they qualify to be sent out or to be retained. Very often we carry them for probably a [76] month after our season opens up, particularly if they are young ball players who have never signed a professional contract before. It is a baseball rule that the first-year man who first signs his professional contract must be carried, paid a salary until the other minor leagues open up, which many of

(Testimony of Oscar Reichow)

them do not until the latter part of April and the first part of May. So as a consequence, we carry them on the ball club for a month and pay them a salary if they show prospects of becoming a good ball player.

Q. Are some of them released after the 30-day period of training with the ball club? A. Yes, sir.

Q. And some are farmed out to leagues of lower classifications? A. That is correct.

Q. And some, if they show unusual prospects, may be retained for a further period of time with the Hollywood Ball Club itself? A. That's right.

Q. When you farm them out to clubs in leagues of lower classification, who generally pays the salary?

A. The lower classification pays what salary it can, and we make up the differential.

Q. In many cases does the lower club pay the entire salary in some cases? [77] A. In some cases.

Q. But more often Hollywood Club has to add something to it? A. That's right.

Q. What then would you say is the status of the players who are farmed out, although under contract with the Hollywood Ball Club, with regard to the tenure of their employment, particularly?

A. Well, the player is out on option, and they are on our reserve list; and we send them out on option with the hope that they will develop so we can recall them at the end of the year. Their contracts, according to baseball law, belong to the Hollywood Baseball Club.

(Testimony of Oscar Reichow)

Q. Generally speaking, is there a considerable difference in skill between the players that you farm out and those that you retain on your regular roster?

A. Oh, yes. There is a lot of difference. If a player showed sufficient skill to remain with us and play in an AAA league, we would surely retain him. But if he doesn't, we send him down to the league in which we think he can play, like "D," "C," "B," or "A" league, depending on what ability he shows during spring training.

Q. Is the tenure of employment or the security of the job of the player that is farmed out, is it less secure than that of a regular player who is playing on the Hollywood Ball [78] Club?

A. Not necessarily.

Q. Do his seniority or length of service have any bearing on whether a player is retained or released? In other words, is the length of time a man has been with the club any criterion as to when he will be released?

A. Not necessarily. If a boy comes in and shows the ability to remain on our ball club and take the position away from an older man, he has that opportunity.

Q. Isn't the criterion of whether a man may remain on your club his professional skill, his ability to play professional baseball?

A. That's right.

Q. Is this same criterion generally applicable throughout baseball?

A. That is customary throughout any league in baseball.

Q. Do you know each of the petitioners?

A. I do.

(Testimony of Oscar Reichow)

Q. With respect to each of the petitioners, I will ask you as to them individually for the purpose of keeping the record straight this question: whether or not during the periods before their entry into military service—what was the character and nature of employment of these particular individuals?

A. Well, most of them— [79]

Q. (Interposing) Will you please reply specifically as to Barisoff?

A. Specifically as to Barisoff, Barisoff was strictly a prospect, a play whom we hoped would develop sufficiently to remain with our ball club after he had sufficient experience in lower classifications.

Q. Was he used on the Hollywood Ball Club itself before his entry into military service?

A. Very little.

Q. Now, with respect to Dawson, what was his status with the Hollywood Ball Club prior to his entry into military service.

A. Dawson was in the same category with Barisoff, strictly a prospect, as was shown that we had him in spring training of the year we sent him to Memphis. We sent him to Memphis for the purpose of development.

Q. How about Knudson?

Q. Knudson was in the same category, just strictly a prospect out of high school. We carried him that year to help him as much as possible when he went into the service.

(Testimony of Oscar Reichow)

Q. How about Lilly? How about his pre-war service with the ball club?

A. Well, Lilly, with his pre-war service with our ball club, was in the capacity of more or less a utility man.

Q. Was he considered a regular? [80]

A. No. If he were a regular, he would have played regularly.

Q. At the time that Lilly did play with the ball club in 1943 as a utility man, was the caliber of baseball being played by the team the general standard over the years that was set for the Hollywood Baseball Club?

A. No. During those years what we termed the "war years" the standard of play in the Pacific Coast League and throughout all the leagues was much lower.

Q. At the time that Lilly played on your club and at the time that Knudson was signed in early 1943 and Dawson in '43, were many of your players that were considered your regular players gone off to war?

A. Yes, quite a few of them.

Q. Were any of these men ever considered as regular Hollywood Ball Club players?

A. No, they were not.

Q. There have been offered in evidence various contracts which are standard contracts of the National Association of Professional Baseball Leagues. Are you familiar with those? A. I am.

Q. Do they provide anything with regard to the obligations of the player during his off-season period, that is, while the regular league, or, the regular season

(Testimony of Oscar Reichow)

is not in [81] progress? Do they obligate him in any way?

A. Yes. They have a clause in that contract where a player agrees not to play any baseball after the 31st of October or participate in any football or basketball games.

Q. Is that obligation not to otherwise engage in baseball or sports up to the time when your privilege of renewing the contract may be exercised?

A. Until he reports for spring training the following year.

Q. At the time that these players returned after their military service and were rehired by the Hollywood Baseball Club at or about the dates that have been indicated in the testimony, were they thoroughly tested or were they tried out before they were signed or after they had signed the contracts?

A. I think they were all thoroughly tested during our spring training trip.

Q. Were they signed on the contracts with the expectation that you have previously stated that they are to be held as prospective and inexperienced players?

A. Yes, they were.

Q. In other words, did you intend them to increase in ability to become more valuable to you? Is that the hope with which they were resigned?

A. That is the only hope you can have when you take a young ball player and take him into spring training: that he [82] will show sufficient merit to remain on your ball club.

Q. After the period of play and training which you had, that each of these petitioners had with the Holly-

(Testimony of Oscar Reichow)

wood Club after their military service, did they show the qualifications necessary to perform as baseball players of the Hollywood Ball Club?

A. Apparently not because the manager and the coach did not think they had sufficient qualifications to remain on our ball club to bring our club up to the standard of play that we felt we needed for 1946.

Q. Do you have any independent opinion of your own as to player Barisoff, as to whether you thought he would be a satisfactory prospect and should be kept?

A. No, sir, I did not. That was strictly up to the manager and the coach.

Q. Did you have any opinions on any of the other players?

A. No, sir, I did not.

Q. Are you familiar with the methods used by professional baseball managers, coaches, in judging players?

A. I am.

Q. Do you know whether or not there is any formula or any method of computing statistics or any standard of that nature that can be used in judging whether or not the baseball play has the skill and ability— [83]

A. (Interposing) No, there is no particular formula that they use; and they don't rely on statistics of what a player did the previous year. When they take a man into spring training they give him a lot of instruction as to how to play, how to hit and how to run and do a lot of things; and they watch him carefully, and they form their own judgment that the ball player just doesn't have the ability to remain on the ball club. It is their judgment.

Q. In other words, whether a ball player is retained, a new one is hired or whether they are released is de-

(Testimony of Oscar Reichow)

pendent upon the judgment of the coach or manager or a combination of both, based upon their experience in evaluating the worth of players?

A. That's right.

Q. Is any definite period of time of observation necessary to arrive at such a judgment?

A. I don't think so. Sometimes you can take a look at a ball player for two or three days and decide that he is not going to do you any good.

Q. In other words, if a man is of a lesser degree of skill or one that is, you might say, obviously not qualified or not a good prospect, then you in some cases make judgment on him in a very short time?

A. I think some managers and some baseball men can, yes. [84]

Q. Can such a judgment be fairly arrived at upon the basis of a training camp experience?

A. Absolutely.

Q. Are baseball games included in the training camp, that is, practice games?

A. Yes. We play exhibition games just for the purpose of ascertaining whether these small players can hit, run and field.

Q. Do you feel that each of the petitioners in this case was given a fair test to show his ability after being rehired by the Hollywood Baseball Club?

Mr. McCall: I object to that, your Honor. The witness testified he had no opinion about the ability of these men.

Mr. Kanne: He could evaluate the judgments and recommendations. He said that he might not be qualified himself to determine whether the players had the skill

(Testimony of Oscar Reichow)

and ability, but he can say whether or not the period of time in which the coaches and managers observed them was sufficient to allow them to form an opinion.

The Court: I shall let him answer. It goes to the weight of it. I shall let him answer it.

The Witness: Yes, I think all the boys had sufficient time to prove their ability.

Q. By Mr. Kanne: Do you know why he was discharged? A. Why? [85]

Q. Yes. A. Yes.

Q. Why?

A. Because he didn't possess the qualifications to play on our ball team.

Q. That is true with respect to each of the petitioners?

A. That's right.

Mr. McCall: If your Honor please, I want to object to that question and answer on the ground that the witness has already testified he did not evaluate these men, and he has no opinion about the matter.

Now he says that he knew they were discharged because they did not possess those qualifications.

The Court: You will have to lay a foundation as to whether this witness has knowledge sufficient to give that opinion. Any man on the street could give that. You have to show that he has had some experience or some qualification to express that opinion. Show that he is qualified.

If he came in contact with these men and had experience with these particular men in question here, he could probably express an opinion. But you have to qualify him first.

(Testimony of Oscar Reichow)

I shall sustain the objection to that until you qualify him.

This man says he was the secretary and business manager [86] of this respondent. Now, was he the man who managed and determined and came in contact with all the effort and playing of these men? That is another question. Whether he was or not, I do not know. He has not said he has yet.

Q. By Mr. Kanne: Upon whose recommendation was each of the players discharged?

A. On the manager's.

Q. And anybody else's?

A. Well, I presume in collaboration with his coach, Mr. Thurston.

Q. What was that recommendation of the manager in the case of each man?

A. Well, the recommendation was that he did not think that each or any one of them would help our ball club for the season.

Q. There has been testimony to the effect that petitioner Lilly played with the Hollywood Baseball Club for a period of time during 1946 after he was rehired.

Can you tell us what the occasion of using him on the Hollywood team was, if any?

A. Well, that year '46 we started out with a second base man by the name of Woodrow Williams who broke his leg, I believe on the 28th of April, after which time we put Lilly in at second base; and later we found it necessary to go out and buy another second base man to take his place. [87]

(Testimony of Oscar Reichow)

Q. Do you know what his batting average was during the time that he was on the Hollywood Club then?

A. I think it was around .225.

Q. Was it necessary to replace him?

A. It was. That is the reason we bought another second base man.

Mr. McCall: As to whether it was necessary, I object to the question. The witness has not shown any knowledge about whether it was necessary or not. He testified he hires and fires these men at the direction of the manager.

The Court: He has not been qualified yet to answer this question. He just said this other man broke his leg.

This man who broke his leg: how long was he injured? Did he play any at all after that?

The Witness: No, he didn't play all season, Judge, until, I believe, the last week or two of the season. He was out all year long.

The Court: You say you had to get someone to replace him?

The Witness: That's right.

Q. By Mr. Kanne: In other words, your regular second base man that you started the season with was Williams, and he went out with a broken leg early in the season?

A. That's right.

Q. And you used Lilly for a period of time thereafter? [88]

Q. As he testified?

A. That's right.

Q. Then was a different player hired by the ball club to play second base?

A. Yes, Glen Stewart.

(Testimony of Oscar Reichow)

Q. Did he thereafter play that position for the team?

A. He played, I believe, every ball game after that time.

Q. And Lilly was no longer used?

A. That's right.

Q. When was the Hollywood Baseball Team changed to a Class AAA league, or the Pacific Coast League changed to that? A. Last season.

Q. What was it prior to that? A. AA.

Q. What is the general distinction between AAA league and AA league?

A. The general distribution of the AAA league is just a classification higher, and it is assumed that with the higher classification you play a better standard and a higher standard of baseball and you pay higher salaries and get better ball players for your club.

The Court: What cities are in this thing?

The Witness: San Francisco, Oakland, Sacramento, Seattle, [89] Portland and San Diego.

Mr. Kanne: No further questions.

Cross Examination

By Mr. McCall:

Q. Mr. Reichow, with regard to Mr. Lilly you had a conversation with him at the beginning of the season about going to Birmingham, didn't you?

A. Birmingham?

Q. Yes. A. Not to my knowledge.

Q. You recall his testimony about that this morning?

A. I do.

Q. Well, that could have happened, couldn't it?

A. It could have.

(Testimony of Oscar Reichow)

Q. Now I am asking you this to see if it is correct, that Mr. Williams got hurt up there and you then needed Mr. Lilly on the team actively to play, did you not? Or do you know about that?

A. Yes, I know about it. At that time I don't believe we had another second base man; so Lilly was necessarily put in at second base.

Q. So then during the period thereafter you secured somebody that Mr. Fausett thought would be a better man?

A. That's right.

Q. Thereafter did you place Mr. Lilly anywhere? [90]

A. Did I?

Q. Yes.

A. In all probability.

Q. But the Birmingham opportunity had gone by at that time?

A. I don't recall that Birmingham was interested in Mr. Lilly.

Q. Well, the best thing you could do with this veteran, then, after securing a man you thought would be a better player, was just fire him? That is what you did?

A. Well, you put it in that phraseology. Yes. But it is baseball law that we have to unconditionally release a player if we don't retain him.

Q. What do you mean by "retain him"?

A. Keeping him on the ball club.

Q. On your active ball club?

A. That's right.

Q. Now, if you farm him out or option him out, that is not retaining him, is it?

A. No.

Q. So you can have any number of men in reserve that you want to, can you not?

A. No.

Q. How many?

A. Twelve. [91]

(Testimony of Oscar Reichow)

Q. Twelve. Is that the difference between the 25 and the 37? A. That's right.

Q. You mean that you are at all times limited to 37 men? A. That's right.

Q. What does a regular first-string ordinarily consist of? Nine players?

A. That depends on the manager's judgment. That is under his control, not mine.

Q. How many contracts can the club give out in a year? A. During the year, 37.

Q. Well, if they have some in reserve and send some out, they can have any number they want to?

A. Not above 37. Let me straighten you out on one thing. During the war period each baseball club could have one player for every five on the 25. In other words, that gave us 30 ball players on our reserve list due to the fact that baseball players were scarce and it was difficult to obtain them. So through baseball law we had that privilege of having one extra player for every five on our ball club. That was during the war period. Our limit is 25. We can carry one extra man for each five during the war.

Q. Now, at the present time, or last year, you could carry more than that? [92]

A. No. Thirty men was all we could carry.

Q. Thirty?

A. Thirty, if we wanted to carry them.

Q. Well, I thought you testified a while ago that up to 30 days after the season opened you could carry 37 men. A. No, no. You misunderstood.

(Testimony of Oscar Reichow)

Q. You did not testify to that?

A. You misunderstood. Thirty-seven was the limit that we are allowed, according to baseball law; but during the war period we had that extra number of five men that we could carry during the war period, only five, during the playing season.

Q. During the playing season?

A. That's right.

Q. How many could you carry? You gave the figure 37. What is the 37 you are talking about?

A. Thirty-seven is the limit that each AAA club can have on its reserve list.

A. That's right.

Q. You mean that they can have 37 men in reserve?

A. In reserve, yes.

Q. And 25 active?

A. No, not "and 25 active men." The 25 active men become active after the season opens up, 30 days after the season opens up.

Q. Well, has the 37 anything to do with the 25? Are they included in the 37?

A. Yes, the 25 is included in the 37.

Q. So that at the present time you can have more men in reserve than you could during the war? Is that what you mean?

A. No, not now. We are allowed only 37 men now. The war is over.

Q. What is it that you were allowed the 30 men for during the war?

A. During the war period because it was difficult to get players during the war period.

(Testimony of Oscar Reichow)

Q. And what players were they, that is—

A. (Interposing) Any players we could pick up, whether active or not, or anybody we wanted to carry on our ball club.

Q. Whether they were active or in reserve, you were limited to 30 during the war?

A. Yes, 30 days after the season started, yes.

Q. At the present time you have 37?

A. That's right. We have 37 now, but 30 days after our season opens up we must cut down to 25.

Q. On the active list? A. That's right. [94]

Q. This 25 includes men in reserve and men on option and all types of men that you have contracts with?

A. Not the 25.

Q. How is that?

A. Not the 25 that we carry after 30 days after our season opens up. We are allowed 12 men to send out on option after the season opens up.

Q. When that season opens up you can have 25 men on the active payroll? A. Yes.

Q. On your club actively playing ball and 12 more you can send out—

A. (Interposing) Send out on option.

Q. On option? A. That's right.

Q. I don't want to discuss this too far, Mr. Reichow, but I do not understand how it is that you can have 30, only 30 during the war and now you can have 37 active and on option. A. No. During—

Q. (Interposing) In the playing season?

A. No.

(Testimony of Oscar Reichow)

Q. Will you explain to the judge so the judge can understand it? I cannot understand it.

A. It is baseball law that clubs in AAA are allowed 37 [95] men on their reserve list. That means players, for instance, we will say, from the close of the season until the following season opens up. We are allowed to have 37 men. Then 30 days after our season opens up we must cut back to 25, which then allows us 12 men to put out on option to other ball clubs.

Q. And the figure 30, now means that they allow you to have 5 in reserve?

A. That was during the war period. After 30 days, after the season was opened, we could carry 30 men instead of 25. But now the war is over we revert to the 25 instead of the 30.

Q. Do you recall having a conversation with Mr. Dawson before his contract was signed with him in which you told him that he was going to be released right away?

A. No, I do not.

Q. Upon whose recommendation did you give him a contract?

A. Upon whose recommendation?

Q. Yes.

A. He had signed with us in '43, and I believe he was recommended to our ball club by one of our scouts who then at that time was Marty Krug.

Q. Well, he was entitled to be reemployed, was he, by your club?

A. Yes. [96]

Mr. Kanne: I object to that as a conclusion.

Q. By Mr. McCall: How did you come to give him a contract?

A. When? What year?

(Testimony of Oscar Reichow)

Q. 1946.

A. 1946? Because he was a National Defense ball player. He was placed on the National Defense List when he left the Memphis Ball Club to go into service.

Q. And the National Defense List of Organized Baseball is a list kept at Judge Bramham's office, isn't it?

A. Correct.

Q. And he is the man who directs what man shall be reemployed by which club? That is correct, isn't it?

A. Yes.

Q. Now, with respect to Mr. Dawson I will ask you if it is not a fact that Mr. Bramham, Judge Bramham, as the president of the Association of Organized Baseball, instructed you to reemploy him.

A. No, he didn't instruct me at all.

Q. Well, what did he do?

A. He reinstated him to the active list of the Hollywood Baseball Club.

Q. Yes. That is because at the time he left he was carried on the active list of the Hollywood Club, wasn't it?

A. He was on the Memphis Club at the time he went into [97] the service.

Q. Why was he restored to your club?

A. Because he was optioned out to Memphis, and his contract, according to baseball law, belonged to the Hollywood Ball Club.

Q. He was obligated to play for you; so that is why you had to reemploy Mr. Dawson, the fact that he left Memphis, actively playing at the Memphis Club didn't make any difference under baseball law, did it?

A. No, sir.

(Testimony of Oscar Reichow)

Q. The same is true, is it not, with respect to each of these men? A. That's right.

Q. They were all carried on the National Defense List? A. That's right.

Q. And were entitled under baseball law to be re-instated? A. That is correct.

Q. On the reemployment of a man coming back from the service isn't it a part of the regulations that they were to receive an increase of 25 per cent of their wage at the time they entered the service?

A. That is correct.

Q. So that the increases that were given to these men were in conformity with that policy? [98]

A. That's right.

Q. Which was general throughout organized baseball? A. Correct.

Q. Now, referring to the standard form contract I will ask you if this isn't correct: that a player who signs this standard form is obligated to report for spring training with the employing club at the beginning of the next season if the club wants him.

A. He is not obligated. If the player does not agree to terms with the club, he has no obligation.

Q. Well, now, let me ask you about clause 8(a):

"Each year, on or before March 1st (or if Sunday, then the succeeding business day) next following the playing season covered by this contract, by written notice to the Player, the Club or any assignee thereof, may renew this contract for the term of that year except that the salary rate shall be such as the parties may then agree upon." A. Right.

(Testimony of Oscar Reichow)

Q. He is obligated to play the next year?

A. It says "may" in there, doesn't it? "May renew the contract"?

Q. The club may renew it?

A. The club may renew it with the player if they agree on the terms, correct. [99]

Q. If you find some difference, there would be no contract?

A. That is right.

Q. "(b) under clause "8" is this:

"In default of agreement by the parties, the salary rate shall be determined as provided in paragraph 9, but pending such determination and final decision rendered, the Player will accept the salary rate fixed by the Club or else will not play otherwise than for the Club or for an assignee hereof." That is part of the contract, isn't it?

A. That's right.

Q. So that he is obligated to play, even though they don't agree as to the wage that is offered.

A. If he desires to play baseball, yes.

Q. In other words, he can't play anywhere else in organized baseball?

A. No, sir.

Q. All right, that is what I wanted to get.

"(c)" is:

"The reservation to the Club, expressly granted and agreed to by the Player, of the valuable and necessary right to renew this contract and to fix the salary rate for the succeeding year, and the promise of the Player not to play during said year [100] otherwise than with the Club or an assignee hereof, have been taken into consideration in determining the aggregate or monthly salary specified herein and the undertaking by the Club to pay said salary is the consideration for the Player's

(Testimony of Oscar Reichow)

services, the reservation, and renewal option granted and promise made." That is correct, isn't it?

A. Yes.

Q. Now, in the case of disputes, it is provided in clause 9 that:

"In case of disputes between the Player and the Club or any assignee hereof arising under the provisions of this contract the same shall be referred to the Executive Committee or the Commissioner as the case may be, as an umpire, and the Committee's decision shall be accepted by all parties as final, subject only to such right of appeal, as is given to the Player only, under the terms of the National Association Agreement and Major-Minor League Agreement and Rules." That is correct, is it?

A. That's right.

Q. So that a man who signs one of these contracts, uniform contracts, must play for that club; and unless he can [100] convince the committee or the umpire that he is entitled to the wage he demands after he signs the contract for the next year, he cannot play anywhere else, can he?

A. In organized baseball, no. He could go to Mexico.

The Court: It might be pretty hard on him, would it not?

Q. By Mr. McCall: Now, to change over from the grade AA to the grade AAA club, you say that more money is paid to the player if it is an AAA club?

A. That's right.

Q. And that is the reason why you expect better playing baseball in an AAA club?

A. That is only natural. If you get better ball players, you pay them better salaries.

(Testimony of Oscar Reichow)

Q. Suppose that you assign a man to a club without any right to recall him, is there any such arrangement as that?

A. No. We don't assign a man with any right to recall him. If we do, we sell his contract outright.

Q. So that you can sell a contract and thereby make yourself another spot for your 25 and 37 men, can't you?

A. That's right.

Q. And that is done all the time, isn't it?

A. That is baseball tradition.

Q. Yes. That would be a method whereby the club could take care of its obligations under the reemployment provisions [101] and the League regulations with regard to reemployment and at the same time keep its personnel up in good shape, wouldn't it? That is, they could sell the contract to someone else?

A. Yes.

Q. And dispose of them?

A. Right.

Q. Now, I noticed that Mr. Barisoff played under contract with Hollywood for some several seasons, did he not?

A. That's right.

Q. Prior to the time that he entered the service?

A. Yes.

Q. Well, all during that time in baseball parlance, he would be known as a Hollywood Club man because he was under contract all that time to Hollywood?

A. We kept him around as a prospect.

Q. Well, he was a prospect; he was also under contract to you and you had to see that he got his money?

A. That's right.

Q. Enough of a prospect, at any rate, to cause you to renew the contract from year to year?

A. That's right.

(Testimony of Oscar Reichow)

Q. The same would be true with each of these other men, except with respect to Mr. Knudson?

A. Yes.

Q. Well, how many men could you have under contract [102] and in reserve for a team during the war?

A. During the war?

Q. Yes. A. Forty-two.

Q. Forty-two. And these men were men on the reserve list? A. That's right.

Q. In other words, they were working for Hollywood, or rather they were under contract, Hollywood's reserve contract?

A. While they were in the service?

Q. Well, not in the military service, but I mean before that time when they were out on option to these other clubs? A. That's right.

Q. They were a part at that time of the reserve group? A. Group, correct.

Q. Well, even those men that were on reserve were material at that time to play on Hollywood?

A. No, not necessarily. It depends on their development whether they are put out on option.

Q. It also depends upon the needs of the club, too, doesn't it? A. Sometimes.

Q. In other words, a man may be just as good to play on the Hollywood team when you have him on reserve at some other place because you have got a surplus of that type of [103] that type of player?

A. No. That would depend on a man's ability. If he could run another man out of a job, he could get the job. If you have a better man, you are going to take the better man.

(Testimony of Oscar Reichow)

Q. Yes. A. Correct.

Q. But you have him on reserve because you think you may need him or may have some use for him?

A. We think that he may develop, yes.

Q. Now, during the 1946 season, what was the day that the season started, that the pay of the players started? A. March 29th.

Q. And when did it close?

A. The season officially closed September 22nd.

Q. Was there a play-off—

A. (Interposing) One week of play-off.

Q. What was that play-off?

A. That was the Shaughnessy play-off to finish September 29th.

Q. You had one week to play off?

A. That is all.

Q. What do you mean by that play-off?

A. Well, you mean by the play-off, you have four teams that finish in the first division, and those four teams compete. The first team plays the third team, and the second [104] team plays the fourth team; and the winners then play in the final for the play-off championship.

Q. How did Hollywood come out in that?

A. We finished third in the league race, and we were knocked out in the first week of the play-off.

Q. I see. In organizing the play-off games do the players get some additional money for playing those games? A. They do.

(Testimony of Oscar Reichow)

Q. In the case of Hollywood last year, how much pay-off compensation was paid to your pitchers?

A. That I don't know. You see, the money that they receive for the play-off goes to the players, and they divide it among the team, the players on the team at that time. There might be 25 portions, 20 portions, or there might be 30 portions; and the players vote that themselves because that money that they win for finishing in the first division, the ball club has nothing to do with that.

Q. Do they give that play-off money to the men on reserve? Do they share in it?

A. No, not unless they were on the ball club at that time, active players.

Q. You generally keep up a full complement of 25 players, don't you?

A. Not always.

Q. How many men shared in that play-off money last [105] year?

A. The play-off last year? I think 32, including the ground keepers, the bat boys and the ball boys and everything else.

Q. I see. Do you know how much it was?

A. No, I don't recall what it was.

Q. The total amount that was divided?

A. Beg pardon?

Q. The total amount that was divided.

A. The total amount was \$1250.

Q. Between 32 people?

A. That's right.

Q. There was an additional week's actual salary paid to each one of the players in addition to the play-off money wasn't there?

A. That's right.

(Testimony of Oscar Reichow)

Q. In other words, they draw an additional 7 days' pay? A. That's right.

Q. So that the season for a player on the team continued until September 29th?

A. That's right.

Mr. McCall: I believe that is all. [106]

Redirect Examination

By Mr. Kanne:

Q. You testified that the players were given the increase because of baseball law over their pre-service contract when they came back, is that correct?

A. That is correct.

Q. In the case of Lilly, do you know whether or not that increase was greater than 25 per cent required by the—(pause). A. It was.

Q. Do you know what his pre-war salary was?

A. I think it was \$300 a month.

Q. And was he rehired at \$450?

A. That is correct.

Q. The additional 25 per cent over and above that required by baseball law, was that done in the hopes that the man would develop and be a player worth that amount?

A. That's right.

Q. Now, in the case of Barisoff, do you recall what his pre-war salary was? To refresh your recollection, I believe it has been testified it was \$200.

A. I believe it was \$200, yes.

Q. And he was rehired at \$300?

A. That's right.

(Testimony of Oscar Reichow)

Q. Was the increase there over and above the 25 per [107] cent, or making a total of 50 per cent increase over his pre-war salary: was that done in the hopes that he would develop and perform according to that salary payment? A. That's right.

Q. I don't know whether I should go back to the reserve list and the roster or not, but when you say the reserve list was 37 players, by that do you mean there were 25 men that are on the active Hollywood roster and there are 12 other men that may be out on farmed-out contracts? A. Yes.

Q. During the regular season?

A. During 30 days after our season opens up.

Q. You mean you may then have 37 men that are under contract with the Hollywood Baseball Club?

A. That's right.

Q. During the course of the year through hiring and discharging, that number of 37 may fluctuate so that you may actually have hired 50 men on your payroll during that period of time, at no time there being more than 37, is that correct?

A. We can't have over 37 at any time.

Q. At one time, but during the course of a full season? A. Oh, yes.

Q. You are apt to have many more than the 37, is that correct? A. That's right. [108]

Q. In the normal course of events, what is the average that you may have under contract at any time during the full year, not the amount at one time, but how many have entered into contractual relationships during the whole year? A. During the whole year? Thirty-seven.

(Testimony of Oscar Reichow)

Q. It is 37, the most you can have at one time, and that amount changes as you hire and fire?

A. I see what you mean. We may have 50 or 75, you can't tell. It all depends on how many players we sign and release.

Q. Is there any figure close to 75?

A. I would say 45 to 50.

Q. That is the general average? You hire 45 to 50 at some time during the year?

A. That's right.

Mr. Kanne: That is all.

Recross Examination

By Mr. McCall:

Q. Mr. Reichow, the Seattle-Rainier Baseball Club is a club in the same league as the Hollywood Club?

A. Yes.

Q. That is the same club?

A. Yes.

Q. And that is the club that was involved in the case of Niemiec vs. Seattle? [109]

A. That's right.

Q. And the same league regulations apply to Hollywood as apply to the Seattle-Rainier Club?

A. That's right.

Mr. McCall: That is all.

Mr. Kanne: That is all.

(Witness excused.)

The Court: We will recess for 5 minutes.

(Brief recess.)

The Court: You may proceed.

Mr. Kanne: Mr. Fausett.

ROBERT S. FAUSETT,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Robert S. Fausett.

The Court: What is the last name?

The Witness: Fausett, F-a-u-s-e-t-t.

Direct Examination

By Mr. Kanne:

Q. Did you occupy a position with the Hollywood Baseball Club in 1946? A. I did.

Q. What was your position? [110]

A. Manager, field manager.

Q. Will you please outline your previous baseball experience?

A. Well, I have played professional baseball for 18 years and with various clubs and managed three years.

Q. Who did you play with?

A. Oh, I played with the Galveston, Texas, League; Indianapolis American Association, Minneapolis American Association, Little Rock, Cincinnati International League and the Hollywood Baseball Club.

Q. Now, will you detail the experience you have had as manager of baseball clubs?

A. I have managed four different clubs. I managed Little Rock in the Southern League and managed the Hollywood one season and most of another, and part of one season of my own club at Albuquerque.

Q. Are you now the manager of a professional baseball club? A. Yes.

(Testimony of Robert S. Fausett)

Q. In the different positions you have held as manager, is one of your duties to select, evaluate players of your club? A. I do.

Q. Do you know each of the petitioners in this case?

A. Yes, I do. [111]

Q. In the year 1946 at the time they have testified being associated with the Hollywood Ball Club, were there periods in which you had an opportunity to observe and examine their play? A. Yes.

Q. Will you tell us approximately what periods of time you did observe the play of Lilly?

A. Well, from spring training up until he was released in May, I believe.

The Court: What year?

The Witness: 1946.

Q. By Mr. Kanne: How long did you have him during spring training?

A. Well, the entire spring training which was around six weeks.

Q. Did you have petitioner Barisoff under your observation? A. Yes.

Q. And how long was he under your observation?

A. During the six weeks spring training.

The Court: What year were these?

The Witness: 1946.

Q. By Mr. Kanne: And petitioner Dawson?

A. Yes, part of spring training in 1946.

Q. I believe it has been testified that Knudson re-[112] turned to the Hollywood Ball Club in about June of 1946. A. That's right.

Q. Did you have an opportunity to observe his performance in play in training? A. In work-outs.

(Testimony of Robert S. Fausett)

Q. Was your observation during those work-outs in your opinion sufficient to form a judgment as to his ability to play baseball? A. I think so.

Q. With respect to each of the other petitioners, do you feel that you had a sufficient opportunity to examine them in spring training or at the times you have testified to to form a judgment as to their ability to play baseball?

A. Yes.

Q. In your opinion did the petitioner Knudson have a sufficient degree of professional skill and ability to allow him to meet the standards of the Hollywood Baseball Club? A. No, I don't think he did.

Q. In your opinion did petitioner Dawson have a degree of professional skill and ability sufficient to equal the standards of the Hollywood Baseball Club?

A. No, I didn't think so.

Q. The same question with respect to petitioner Barissoff? A. Yes. [113]

Q. That is, he did not have that degree of skill and ability? A. That's right.

Q. Did Lilly play on your ball club for a period of time after Williams was injured? A. Yes.

Q. After observing that period of play, as well as the time that you had him in spring training, did you form an opinion as to whether he had the degree of professional skill and ability necessary to play up to the standards of the Hollywood Baseball Club? A. Yes, I did.

Q. What was your opinion?

A. My opinion was he wasn't quite equal to the standards that we was going to try to hold in the Pacific Coast League, the standards of play.

(Testimony of Robert S. Fausett)

Q. Did you discuss these matters with your coach or anyone else associated with the Hollywood Baseball Club?

A. Oh, yes.

Q. After those discussions, and based upon your independent judgment, did you make any recommendations to the business management of the club?

A. Yes, I did.

Q. That the individuals should be released?

A. In my opinion their ability didn't equal that of [114] the men that they were competing with for their particular position?

Q. In each case was this purely a professional judgment or was it based upon any personal feeling that you had towards the individuals?

A. It was based purely on my judgment as to whether they would help our ball club as far as their playing baseball is concerned.

Mr. Kanne: Cross examine.

Cross Examination

By Mr. McCall:

Q. Mr. Fausett, the question was asked you as to whether or not these men possessed the skill and ability equal to the standards of the Hollywood Baseball Club.

Now, what standard do you mean?

A. Well, that is all in our own mind. We have seen different classifications play, and we have built up in our mind a certain standard they must come up to for that particular classification. That is our job to decide that.

Q. And then you said also that in your opinion their ability did not equal that of the men they were competing with for these places?

A. That's right.

(Testimony of Robert S. Fausett)

Q. That actually is what you meant by "the standard"?

What you are trying to do is to pick the best men for [115] the place? A. That's right.

Q. So that what you actually mean was that you had men, that you had them considered for the particular places? A. Yes, sir.

Q. That you thought could play baseball better than them? A. That's right.

Q. And that was actually the standard that you were applying, wasn't it? A. Yes, sir.

Q. With respect to Mr. Barisoff, there is no doubt, is there, that his performance in Bremerton would qualify him for a better place in a better league?

Mr. Kanne: I object to that question, your Honor. Evidence as to what a player may subsequently develop into is not pertinent to determine an honest judgment of fact that was made at the time that he was discharged.

It is granted that there may be cases where judgment may be right or may be wrong, but the evidence that was had before at the time of the discharge would be the only thing that can be considered in making the judgment.

The Court: Sustained.

Q. By Mr. McCall: With respect to Mr. Barisoff, did you consider his qualifications from the standpoint of play- [116] ing right field and at bat?

A. State the question again, please.

Q. Did you consider the qualifications of Mr. Barisoff from the standpoint of playing right field or in the field, and his qualifications to hold down that job from the

(Testimony of Robert S. Fausett)

standpoint of batting? Did you consider him from that standpoint?

A. Well, Mr. Barisoff was pitcher and an outfielder. He had never established any record to any extent as far as playing any other position, as far as I knew. For that reason I probably didn't consider him a prospect for any other position that I was familiar with.

Q. I see. You were not familiar with the fact that he did play back in Anniston primarily in the field?

A. No.

Q. And had a good hitting record back there?

A. No.

Q. Now, as a matter of fact, Mr. Fausett, you were not manager of the club when any of these men formerly were connected with the club, were you?

A. Before they went in the service, no.

Q. You had no information about them prior to that time? A. No.

Q. And your judgment as to their abilities in relation, in comparison to the other men, was simply that which [117] you obtained from watching them for a time in 1946?

A. I base my judgment on purely what I see and not records.

Q. I see. In other words, what about a batting average of .340? Do you pay any attention to that?

A. Well, we had a ball player last year that hit over .300 in the American League the year before, and he came to our ball club last year and we had to release him. So I base my judgment purely on what they can do while they are with me.

(Testimony of Robert S. Fausett)

Q. I see. So, as a matter of fact, you don't look at the record, do you? A. That's right.

Q. This whole business of picking men to go on the baseball team is a matter of the personal discretion and judgment of the manager, isn't it? A. That's right.

Q. That is what this was based on?

A. That's right.

Q. And you picked the man who would remain on this team and recommended that these men be released because you felt there were other men available to you at the time who had better ability? A. That's right.

Q. At that time? [118] A. That's right.

Q. And that was the sole basis upon which they were released, wasn't it?

A. Yes. It was absolutely the sole basis.

Mr. McCall: That is all.

The Court: Just a minute. Did you give each one of these four men petitioning here while you were there an opportunity and chance to demonstrate their ability to meet the skill that you wanted?

The Witness: I feel I did.

The Court: Did they actually attempt to play?

The Witness: We had exhibition games, your Honor, that we played that we based our judgment on.

The Court: Exhibition games?

The Witness: Yes.

The Court: Did you give them any chance at all in any regular games at all?

The Witness: Well, one of the players after the season opened we retained for some time.

(Testimony of Robert S. Fausett)

The Court: Did they have any record there made that you kept account of as to batting ability or fielding ability? Don't you keep a record of that?

The Witness: Yes, they keep records of them?

The Court: Do you know what the records of these four men were while they were under your observation? [119]

The Witness: No, sir, I don't offhand.

The Court: Does the club have the record?

The Witness: Yes.

The Court: The batting average and fielding? Don't they keep a record of that?

The Witness: Yes, they have a record.

The Court: How many of these four petitioners here when you were there played in actual games after the season commenced?

The Witness: One.

The Court: Who is he?

The Witness: Mr. Lilly.

The Court: How many games did he play?

The Witness: I would guess approximately anywhere from 10 to 15 games.

The Court: And you never used the other three at all?

The Witness: Only in spring training games.

The Court: Just spring training games. But I mean after the season commenced, at the time of the season you never used these other three men at all?

The Witness: No. I formed my opinion before the season ever opened.

The Court: I see. Then, in other words, they just sat on the bench or you farmed them out?

The Witness: Well, we couldn't farm them out. [120]

(Testimony of Robert S. Fausett)

The Court: What did you do with them?

The Witness: Released them.

The Court: Oh! You released them right out, the whole three?

The Witness: Yes.

The Court: How could you determine the batting average or the ability of a ball player in the spring training season? Do you have another training there to keep a record and enough contests to determine whether a ball player could hit a ball or not?

The Witness: Well, we had around six weeks; and in those six weeks we probably played at least 20 exhibition games, what we call exhibition games. We played other clubs in the Coast League and also Major League Clubs and see how they, as we term it, stack up against other clubs in actual ball games.

The Court: When you came to survey all of the players that you had in this club, you thought these four men could not meet the requirements to compete with these other clubs, is that it?

The Witness: That's right.

The Court: You observed that from your actual experience in operating with them during the preparation for the regular season?

The Witness: Yes, sir. That happens to be a manager's job, to decide. You are only allowed to carry so many men, [121] and you have to pick the men that you think will help your ball club the most. Naturally you are going to do that.

The Court: One of these players seemed to have developed to be a ball player after you let him go.

(Testimony of Robert S. Fausett)

The Witness: There is many times that a ball player will develop in a very short time, maybe after some people have given up on him completely; and it is a matter of judgment. I might make mistakes. There might be a lot of ball players that make mistakes.

The Court: I see one of these ball players was farmed out to the New York Giants, the big club, and from there they farmed him out to the Minneapolis Club.

The Witness: That was after we had—

The Court (Interposing): I mean just immediately after you had let him go.

The Witness: He went and established a record in the Class B League, which is a lower classification.

The Court: So you missed him in your judgment?

The Witness: Yes. If he had done that good with us, I wouldn't have made a mistake.

The Court: This record shows he made a pretty good record as a ball player there after that, anyhow. He got in the high class there, and he was hitting—what was it—.345, 40 home runs. Is that not the record?

The Witness: That was three classifications lower than [122] our classification, though.

The Court: Do you expect a man to make more than 40 home runs in a season?

The Witness: I say that is a lower class.

The Court: Would you not consider that good: 40 home runs?

The Witness: Yes, that is very good.

The Court: I played baseball when I was a young fellow, and I considered that pretty good ball playing. I was just wondering whether you missed your guess.

(Testimony of Robert S. Fausett)

This man has a pretty good record so far as a ball player. Counsel says he developed after he was released; immediately after he was released he seems to have become a very good ball player. I am just testing your judgment in his ability at the time you released him. That is what I am trying to get at.

The Witness: Your Honor, I think it will be tested this year. He will be farmed to Minneapolis in an AAA league.

The Court: I cannot say anything about this year. We are trying this lawsuit as to what happened when he was released. That is the law: at the time he was released. His development immediately after might have some bearing as to what his ability was when you released him. He seems to have gone to the top, if I understand this evidence, referring to the first man. [123]

Mr. McCall: Barisoff?

The Court: Yes. It seems that he brought in a lot of runs, and he made 40 home runs and he batted an average of .345. I don't know what else a ball player can do to be a good ball player because when you talk about these old home-runners in the big league, you do not have many of them that make more than 40 in a season.

I am just testing at the time, you know, when he was released.

Mr. Kanne: Yes, your Honor.

The Court: This man's judgment might have unintentionally slipped as to him.

You may have released a man and the next day he goes out and proves to be the top. But the matter is as to what his ability was at the time he was released, within a reasonable time.

(Testimony of Robert S. Fausett)

As to that first man here, it impresses me that he had some ability when he was released as a ball player. I do not know what else he could do.

If I understand the way they keep record of ball players, they write down as to how many runs they make and how many bases they steal, how many fieldings; they keep a record of that nowadays, professional baseball players.

This man came in and testified he had done that. I am not questioning the witness' sincerity, not at all. I am [124] just saying we all do not guess right sometimes.

The Witness: Well, I could have definitely have guessed wrong; but I say still there were three classifications lower, and it doesn't make any difference as to the kind of a player a man is as to what classification he is in because he is competing against better ball players, and there may be better pitchers in a higher league and he wouldn't establish that kind of a record.

The Court: You do not think he would?

The Witness: I don't think he would.

The Court: I am thinking of the judgment of the New York Giants. They must have had some record of this man. They would not pick up anybody around the country.

The Witness: I don't think so. He had a good record the next year, and he might prove just as good as they think he is.

The Court: They send men out to pick the players, as I understand it. That is all.

Mr. McCall: I have one other question, your Honor.

Q. By Mr. McCall: The three other men never did play in any regular games during the season, but Mr. Lilly did play, you say, about 15 games?

(Testimony of Robert S. Fausett)

A. Well, I don't know the exact number.

Q. The man who came in and took the second base job: who was that? [125]

A. Glen Stewart.

Q. And how is it that you came to acquire him, I mean from what club?

A. Because he was with Oakland. I had seen him play for over a year and a half, and liked his baseball playing.

Q. Mr. Lilly was used by the club until you could find someone else to go in that you thought was better?

A. Mr. Lilly, and we had one other fellow we alternated Mr. Lilly with.

Q. And you felt that this other man would be better; and so at the time you acquired him you let Mr. Lilly go?

A. Naturally. We thought he would be better or we never would have acquired him.

Q. As a matter of fact, there was no particular deficiency on the part of Mr. Lilly, but you felt that the other man would fit the place better; that is correct, isn't it?

A. No. As I say, we expected him to come up to certain standards of play, and we thought this other fellow would come up to this standard where we didn't think this particular man would.

Q. Now, after you had supplanted Mr. Lilly with Mr. Stewart, as a matter of fact did the position of the club change materially in the League?

A. I don't recall.

Mr. Kanne: I have a couple of more questions. [126]

Redirect Examination

By Mr. Kanne:

Q. You testified that all of the players, other than Lilly who was with you for a little while, that you made

(Testimony of Robert S. Fausett)

your judgment by seeing them perform in regular league games, is that correct? A. That is correct.

Q. You made your judgment on the exhibition game and spring training with major leagues and other Pacific Coast leagues? A. That's right.

Q. Did you feel at that time that you would be willing to risk playing any of these men in a league game which would count in the won-and-lost column toward your eventual standing?

A. No, I didn't, or I would have retained them.

Q. When Barisoff was in the spring training camp there, did he make any request to you to be tried out or to be considered as an outfielder?

A. I don't believe he did particularly to me. I think maybe he did to someone else connected with the club. I don't know who. Finally word eventually got to me that he wanted to try for outfield, but he never did come to me personally.

Q. He never came to you personally as manager at all [127] to be considered as outfielder?

A. Never at all.

Q. In other words, you based your judgment on his ability as a pitcher? A. That is correct.

Q. That is what you understood he was signed on the ball club as? A. That's right.

Q. Do you happen to know the conditions up at the Bremerton Baseball Park?

A. I have heard. I have never seen the park.

Mr. Kanne: That is all, thank you.

(Witness excused.)

Mr. Kanne: Mr. Thurston.

HOLLIS JOHN THURSTON,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Hollis John Thurston.

The Clerk: T-h-u-r-s-t-o-n?

The Witness: That is correct.

Direct Examination

By Mr. Kanne:

Q. Are you employed by the Hollywood Baseball Association? [128] A. I am.

Q. Were you during the 1946 season?

A. Yes, sir.

Q. What was your position?

A. I am a scout and a coach.

Q. What are the duties of a scout and a coach?

A. Well, to instruct and help the younger players and to try to find ball players who can help our ball club.

Q. Did you play as a professional baseball player?

A. Well, I played with the Chicago White Sox and the St. Louis Browns, Washington Senators and the Brooklyn Dodgers, the San Francisco Seals and the Missions, Seattle.

Q. How long have you been in professional baseball?

A. Thirty-two years.

Q. How long were you in the major league?

A. Nine and a half years.

Q. What positions have you held in baseball other than as a player?

A. Scout for the Pittsburgh Pirates.

(Testimony of Hollis John Thurston)

Q. What were your principal duties as a scout?

A. To buy ball players who I thought could help the Major League Club.

Q. In performing those duties you were required to evaluate and judge and make recommendation on the ability of [129] baseball players? A. That's right.

Q. Do you know each of the petitioners in this case?

A. Yes, I do.

Q. During the course of the 1946 season did you have occasion to observe their ability as baseball players?

A. Yes, sir.

Q. Did you see Lilly during the spring training of that year and up to about May 26th with the Hollywood Ball Club? A. Yes, sir.

Q. Did you see Barisoff during the spring training season? A. Yes, sir.

Q. Did you see Knudson for a period around about June of 1946? A. Yes, sir.

Q. Did you see Dawson during the spring training?

A. Yes, sir.

Q. Do you feel that in each case that you had a sufficient opportunity to observe them playing baseball and in training to form an opinion as to their ability?

A. I do.

Q. Did you form an opinion as to each of their respective abilities? [130] A. Yes.

Q. Do you think that Knudson possessed the degree of skill and ability sufficient to equal the standards of play of the Hollywood Baseball Club? A. I do not.

Mr. McCall: If your Honor please, I want to object to that question. The manager, the playing manager who just left the stand, testified that he did not take into con-

(Testimony of Hollis John Thurston)

sideration any of the records the player may have had of his play. They didn't know anything about the records and that what had to be done, the sole standards that they had were that he, the manager, decided whether in his own mind the man had ability greater than another man.

The Court: This man may have proceeded differently; so let him testify. He is not bound by the other man's testimony.

Mr. McCall: The other man, if your Honor please, was the man who made the decision; and there were no standards he followed.

The Court: Overruled. I think he should answer.

Q. By Mr. Kanne: In your position as coach and scout with the Hollywood Baseball Club did you collaborate with the manager, Mr. Fausett, in the discussion of the ability of baseball players? A. Yes. [131]

A. And you made recommendations as to what you thought of different baseball players?

A. And suggestions.

Q. Going back to the discussion of the degree of skill and ability that was possessed by the respective petitioners, directing your attention to that of Knudson, did you feel during the 1946 season at the time that you observed him that he had the degree of skill and ability sufficient to meet the standards of the Hollywood Baseball Club?

A. No.

Mr. McCall: If your Honor please, I would like first for counsel to specify what he means by "standards."

If we understand standards, then we can talk about something. But this is pure speculation he is talking about.

(Testimony of Hollis John Thurston)

What are the standards of the Hollywood Club? I object to it because there are no standards that he is talking about, that is, that they haven't shown any standards, that there were any standards other than the preference of the manager.

The question calls for something that is speculative entirely, unless he shows that there are some standards that he is talking about.

The Court: So far they have indicated that the standard was to be able to meet opposition.

Mr. McCall: A relative degree between two men, that's right. [132]

The Court: Opposition, as to whether or not a particular man could pitch as well or play right field or second base as well as some other player on a club up here in Frisco or Seattle. That is about what the testimony was.

Mr. McCall: That is correct.

The Court: That is the standard. They wanted to meet competition, as I understood from what some of them said. Unless they have some other way, that is what I gather so far.

Mr. Kanne: That's right, your Honor. I mean to imply that by the term when I use it. That is what I mean.

The Court: They try to meet opposition. That is what the witness said.

Mr. McCall: Your Honor recalls that he said—and here is what he said—that it was his opinion as to their ability, every one of them, that it did not equal that of the men they were competing with for these places.

Now, that is what the last man, Mr. Fausett, said.

(Testimony of Hollis John Thurston)

If that is the standard that this man is going by, I have no objection to it. I say that the mere use of the word "standards," the standards of the Hollywood Club—

The Court (Interposing): Well, he may have some other way to explain "standards" than the other witness. He has a right to say so.

Mr. McCall: If he will specify what standards he is [133] talking about—(pause).

The Court: He just wants to know how you judge to pick these men.

The Witness: In scouting I go through several classifications of leagues, and in scouting for the major league you try to find a boy naturally who will meet the standards of play in the major leagues, and if I am going to buy a ball player for our AA team, I try to find a ball player who will meet the standards of the league that we are going to send him to. We sort of have in our mind the standard of play in each league classification, and it isn't at all by the records.

I bought a ball player with .250 in this league, and he went to the major league and hit over .300 and hit 15 home runs. He won't hit .250 in this league.

I bought a pitcher who won one ball game and lost six, and he went to the major league and won 11.

So it is a standard of play. If he has that physical ability to develop, why, he has a chance to play in the league that he is being sent to. But he must have some natural requirements, naturally. Then he must develop himself if he wants to advance in his play.

Q. By Mr. Kanne: I don't believe we did get an answer to the question that was asked, which was whether or not in your opinion Knudson possessed the degree of

(Testimony of Hollis John Thurston)

skill and ability [134] within the standards of the Hollywood Baseball Club. A. I didn't think so.

Q. Now, I ask you the same question with regard to petitioner Dawson. A. I didn't think so.

Q. And Barisoff?

A. I think he only went to bat a couple of times in spring training, but he came in as a pitcher. I knew him as a pitcher.

Q. You what?

A. I thought he was a pitcher, and he had a bad arm.

Q. You understood that he was a pitcher, is that correct?

A. Yes. And Bill couldn't throw very well. His arm was sore.

Q. Well, with regard to petitioner Lilly, did you feel in your opinion that he did not come up to the degree of skill and ability to meet the standards of the Hollywood Baseball Club? A. I didn't think he did.

Q. Did you observe him during the regular season for a portion of the time? A. Yes.

Q. In your opinion, was his batting up to that standard of the baseball club? [135]

A. No, it was not. I tried to help Lilly. I didn't think he could hit the Coast League pitching with his style of batting, and I tried to help him. I worked with him.

Q. Had you worked with him during spring training on the same point? A. Yes.

Q. Was he able to overcome his difficulty and improve his batting? A. Very little, but some.

Q. But he still did not come up to the standard of the ball club, is that correct? A. I didn't think so.

(Testimony of Hollis John Thurston)

Q. Did you feel in each case that you had sufficient opportunity to observe these players perform to form this judgment?

A. Yes. That is as long as I see most players, longer, in fact.

Q. In your scouting observations do you often make an opinion or a recommendation based upon a lesser period of observation from that which you observed these players?

A. Yes, I have.

Q. Do you feel that there is any definite limit that you are required to observe a player before you can make an honest, and, in your opinion, a satisfactory judgment?

A. Oh, there are times when you are in doubt about a [136] man's ability in one certain department of the game, and you would like to see him against a different style pitcher or otherwise you could see the fellow once and you feel you have seen enough.

Q. Were you in doubt of any of these men at the time they were released?

A. No.

Q. Did you ever have any experience up in the league in which Mr. Barisoff testified that he played after he left the Hollywood Club?

A. Yes. I managed there in the year 1937.

Q. In that same league?

A. Played first base, but they didn't have the talent when he played in the league at that time.

Q. Was that the comparison with the standard of play in that league?

A. Well, it was much lower.

Q. Do you recall what class that was in 1946?

A. It was Class B, the first year the league was organized.

(Testimony of Hollis John Thurston)

Q. I mean what was it in 1946, the year that Barisoff was up there? A. It was Class B.

Mr. Kanne: No further questions. [137]

Cross Examination

By Mr. McCall:

Q. Mr. Thurston, what standards did you use, now, in judging these men?

Well, answer the question: What standards did you use? You say they didn't come up to standards of the Hollywood Club.

Now what standards are you talking about?

A. The standards of the entire league.

Q. What's that?

A. The standards of the entire league.

Q. Now, what standards did you judge them by?

A. It is an AAA league, and I don't think the boys can play AAA baseball.

Q. What is AAA?

A. Well, it is next to the major league.

Q. So playing AAA baseball consists of what?

A. You must be able to run, throw, field and hit.

Q. Each one of these men could run, throw, field and hit, couldn't they?

A. Not well enough, I didn't think.

Q. Well, did you have any figures to show whether they could run, field, throw or hit?

A. I never use figures.

Q. As a matter of fact, it has been testified, both by [138] Mr. Fausett and yourself, that you don't bank on figures in this matter? A. That's right.

(Testimony of Hollis John Thurston)

Q. So, as a matter of fact, there are no standards from the standpoint of averages or anything of that sort that you measure men by?

A. No. You think if he can help you win a ball game, naturally that is what you want.

Q. So the standard that you apply to a man—isn't this correct—is this: that you have a place in mind, and there is one man and another man, and you make an opinion as to whether you think one man or another would best fit in that place?

Now, is that the standard you are talking about? Isn't that it?

A. Well, you have, by their play, naturally form an opinion. You can't form an opinion until you see them both play.

Q. That is correct.

A. Or until you see one play. It makes no difference. If you don't believe a man can play in the league, why, you certainly don't want to carry the man.

Q. Well, by playing in the league you mean that he is either equal to, superior to or lesser than some other particular person that you have in mind? [139]

A. Not necessarily. You may have four men for one position, and possibly there wouldn't be any of the four that can help you win a ball game in the league. You would have to let all four of them go and get another, one that you felt in your own mind could help you.

Q. But there is no standard, no figures that you go by?

A. No, I wouldn't say there are any figures.

Q. Do you have any figures that you applied to these men?

A. No, just by merely watching them play.

(Testimony of Hollis John Thurston)

Q. Spring training is the time when actually the club has a lot of candidates for places on the team?

A. That is right.

Q. And the standards that are applied there that you try to pick out the men who are the best for those particular places—that is correct?

A. That's right.

Q. Now, the man that is the best, that is reported, and assuming you have got a place to fill, you give him that place, don't you?

A. If he can win the job, yes.

Q. Well, assuming he is the best there and you have got to have the place filled; so you hire him? That is what happens?

A. That's right. [140]

Q. So the standard is his comparison with a particular group that has reported for spring training or on the field? Now, that is correct, isn't it?

A. To a certain extent.

Q. In judging these men, I will ask you if this isn't what you thought, and this is what Mr. Fausett finally said that he meant: that he judged that the ability of these men did not equal that of men they were competing with for the places on the team.

That is what you meant, wasn't it?

A. Not exactly. You have to build your ball club up so they will be a competitive team in your league; but regardless of your men, you may have to fire all of them that you have in camp and get 25 new ones.

Q. If you fire them all at once, you have to have somebody play at that place, whether he is good, bad or indifferent?

A. You use him until you get somebody better.

(Testimony of Hollis John Thurston)

Q. What I am trying to get at is the actual standard. These men you let go because you had somebody whose ability you considered to be better than theirs? That is the actual test, isn't it? A. Yes.

Mr. McCall: That is all. [141]

Redirect Examination

By Mr. Kanne:

Q. I would like to go back to the question of standards here again.

You testified that these men did not come up to the standards of the Hollywood Baseball Club, and one time you testified that the standards were those of beating the competition that would be afforded by the other teams in the league; in other words, you judged the man as to whether he could play ball in the Pacific Coast League.

Now, Mr. McCall has asked questions to which your replies have indicated that your judgment might be connected with the relative position of the players alone.

In stating what the standards of the Hollywood Ball Club were, the standards of judging these men, do I understand you to say that you were judging the standards of opposition which might be met from the entire Pacific Coast League?

A. Well, you do. You have to build your club to compete with the other clubs in the league.

(Testimony of Hollis John Thurston)

Q. In other words, you are not just judging between particular individuals on your own ball club who are competing for a job, in seeing whether a man comes up to the standards of the Hollywood Baseball Club? You are seeing whether he can come up to the standards of the other men in the league and can hit and pitch in comparable style with other [142] players, is that right?

A. That's right.

Mr. Kanne: That is all.

Recross Examination

By Mr. McCall:

Q. But you have to take what is there anyhow, don't you?

A. You have to have nine men on the field, when you start the game, yes, sir.

Q. And your actual test is, Who are the best men for the nine?

A. To start the game.

The Court: Is that all of this witness?

Mr. McCall: That is all, your Honor.

The Court: That is all, Mr. Witness. You are excused.

(Witness excused.)

Mr. Kanne: Respondent rests, your Honor.

Mr. McCall: One further question, your Honor. Mr. Dawson, please.

HUBERT L. DAWSON,

recalled as a witness by and on behalf of the government in rebuttal, was examined and testified further as follows:

Direct Examination

By Mr. McCall:

Q. Mr. Dawson, I overlooked asking you, When was it [143] that you took up the matter of your release by the Hollywood Club with the Selective Service System for the purpose of filing a complaint?

A. You mean after I was released? I applied at my local draft board in my home town.

Q. What town is that?

A. Fullerton, California.

Q. How many days after your release?

A. Approximately three or four.

Q. And you have cooperated with them ever since?

A. When I went to Yakima to play up there I had correspondence with them asking them if they had any information whatsoever. They didn't get any information; so I applied at the Yakima Selective Service where I got action.

Q. You have been actively cooperating with them ever since that time?

A. Yes, sir. It has taken that time.

Mr. McCall: That is all.

(Witness excused.)

Mr. McCall: That is our case, your Honor.

The Court: Both sides rest?

Mr. Kanne: Yes, your Honor.

Mr. McCall: Yes, if the court please.

The Court: Well, you may be here tomorrow morning at 10:00 o'clock and argue the case. [144]

Mr. Kanne: Very well, your Honor.

The Court: 10:00 o'clock tomorrow morning we will hear the argument from both sides.

(Whereupon, at 3:55 o'clock p. m., an adjournment was taken until 10:00 o'clock a. m., March 7, 1947.)

[Endorsed]: Filed Jul. 29, 1947. [145]

[Endorsed]: No. 11706. United States Circuit Court of Appeals for the Ninth Circuit. William Barisoff, Robert I. Knudson, Hubert L. Dawson, Jr., and Arthur M. Lilly, Appellants, vs. Hollywood Baseball Association, a corporation, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed August 12, 1947.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11706

WILLIAM BARISOFF, ROBERT I. KNUDSON,
HUBERT L. DAWSON, JR., and ARTHUR M.
LILLY,

Appellants,

vs.

HOLLYWOOD BASEBALL ASSOCIATION, a cor-
poration, Appellees.

APPELLANTS' STATEMENT OF POINTS ON
WHICH THEY INTEND TO RELY ON THE
APPEAL

Come now the appellants, William Barisoff, Robert I. Knudson, Hubert L. Dawson, Jr. and Arthur M. Lilly, and pursuant to Rule 19(6) of this Court, state that the points on which they, and each of them, intend to rely on this appeal are as follows:

1. The District Court erred in dismissing the petitioners and refusing relief to each appellant, under 50 U. S. C. A. App. Secs. 308(e) and 357.

2. The clear weight of the evidence is that each appellant left a position "other than a temporary position" as a baseball player, in the employ of appellee in order to be inducted into the armed forces, within the meaning of Section 8 of the Selective Training and Service Act of 1940, and was reemployed in conformity with said section of said act; and the pleadings, the evidence and the applicable law are insufficient to, and do not support the trial court's finding that petitioners' said positions were temporary.

3. The clear weight of the evidence is that each appellant was "discharged without cause" by the appellee from his restored position as a baseball player in appellee's employ, within one year after his restoration thereto, contrary to the provisions of Section 8(c) of the Selective Training and Service Act of 1940; and the pleadings, the evidence and the applicable law are insufficient to and do not support the District Court's findings that the appellants were not discharged without cause.

4. The clear weight of the evidence is that each appellant suffered a loss of wages by reason of the appellee's unlawful action in discharging him without cause within the year following his reemployment and restoration to his former position in the appellee's employ; and the pleadings, the evidence and the applicable law are insufficient to, and do not support the District Court's findings that none of the appellants suffered any such loss of wages.

5. The clear weight of the evidence is that each appellant was qualified to perform the duties of his position as a baseball player in the appellee's employ, both before and after his service in the armed forces, and that the circumstances of the appellee had not so changed at any time as to make it impossible or unreasonable for the appellee to reemploy and retain each of them in its employ for the statutory year following his restoration to such position; and the pleadings, the evidence and the applicable law are insufficient to, and do not support the District Court's findings that none of the appellants were qualified to perform the duties of their positions in the appellee's employ either before or after his service in the

armed forces, and that the appellee's circumstances had so changed as to make their reemployment, restoration and retention impossible or unreasonable within the meaning of Section 8(b)(B) of the Selective Training and Service Act of 1940.

6. The pleadings, the evidence and the applicable law are insufficient to, and do not support the District Court's findings that any of the appellants waited an unreasonable length of time to commence suit after their unlawful discharges by the appellee and that the appellee was prejudiced by such delay.

7. The trial court erred in failing and refusing to require the appellee to reemploy the appellants Hubert L. Dawson, Jr., and Arthur M. Lilly for that portion of the reemployment year of each that remained unexpired at the time of their unlawful discharge; and in failing and refusing to require the appellee to compensate all four of the appellants for their loss of wages suffered by reason of their unlawful discharges.

Respectfully submitted,

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant U. S. Attorney

Chief of Civil Division

By James C. R. McCall, Jr.

Assistant U. S. Attorney

Attorneys for Appellants

[Endorsed]: Filed Aug. 15, 1947. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause]

STIPULATION AS TO EXHIBITS NOS. 1, 2, 3, 5,
6, 8, 9, 10, 11, 13, 14, 15 and 16

Appellants William Barisoff, Robert I. Knudson, Hubert L. Dawson, Jr., and Arthur M. Lilly and Appellee Hollywood Baseball Association, stipulate and agree as follows:

All of the 16 original exhibits were transmitted to the Ninth Circuit Court of Appeals with the record, and are available for inspection in the hands of the Clerk of the Court.

With the exception of Exhibits Nos. 4, 7 and 12, all 16 of the exhibits are Uniform Player's Contracts on printed forms approved by the National Association of Professional Baseball Leagues. The provisions of all of the said contracts are identically the same except as to: (1) the class of the contracting baseball club; (2) the name of the contracting baseball club; (3) the name of the contracting player; (4) the year, or playing season, for which the contract is to be effective; (5) the agreed salary; (6) the date of the signing of the contract; and (7) any extra compensation to be received by the player.

To save printing expense, it is agreed that only Exhibits Nos. 2, 4, 7 and 12 are to be included in the printed record; and that the Exhibits Nos. 1, 3, 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 are identical with Exhibit No. 2 in all material respects, save and except that the aforesaid class,

the parties, the playing season, the salary, the date and the extra compensation provisions vary, as between said exhibits, in accordance with the Table of Contracts set out below:

TABLE OF CONTRACTS

<u>Exhibit</u> Number	<u>Club</u> Class	<u>Contracting</u> Ball Club	<u>Contracting</u> Player	<u>Year</u>	<u>Monthly</u> Salary	<u>Date</u>
1	AA	Hollywood	William Barisoff	1942	\$200	3-31-42
2	AAA	"	"	1946	\$300	2-18-46
3*	B	Bremerton	"	1946	\$175	4-24-46
5	AA	Hollywood	Arthur M. Lilly	1943	\$300	4-15-43
6	AAA	"	"	1946	\$450	2-18-46
8*	B	Yakima	"	1946	\$200	6- 7-46
9	AA	Hollywood	Robert I. Knudson	1943	\$200	6-25-43
10	AAA	"	"	1946	\$250	5-29-46
11*	C	Fresno	"	1946	\$150	6- 6-46
13	C	"	"	1946	\$200	8-15-46
14	AA	Hollywood	Hubert L. Dawson, Jr.	1943	\$300	4-15-43
15	AAA	"	"	1946	\$375	4- 1-46
16*	B	Yakima	"	1946	\$200	4-24-46

*See Extension of Table of Contracts Below:

EXTENSION OF TABLE OF CONTRACTS

<u>Exhibit</u> Number	<u>Contracting</u> Parties	<u>Extra Compensation</u> (if any)
3	(Bremerton—Barisoff)	10% of player's sale price
8	(Yakima—Lilly)	\$500
11	(Fresno—Knudson)	\$100 per month from Hollywood
16	(Yakima—Dawson, Jr.)	\$450

By substituting data from the Table of Contracts in "Class" line of the caption, and in the "Parties", "Employment" "Salary", date and "Notice" paragraphs of Exhibit No. 2, all of the terms of all the contracts made Exhibits Nos. 1, 2, 3, 5, 6, 8, 9, 10, 11, 13, 14 and 16 may be ascertained.

This August 14th, 1947.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant U. S. Attorney

Chief of Civil Division

By James C. R. McCall, Jr.

Assistant U. S. Attorney

Attorneys for Appellants

VICTOR FORD COLLINS

Attorney at Law

By Frank J. Kanne, Jr.

Attorneys for Appellee

[Endorsed]: Filed Aug. 18, 1947. Paul P. O'Brien,
Clerk.